

No. 11749
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMON, A.
L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY and IRVIN
S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administrator of the Estate
of Stanley B. Houck, Deceased, RUBY E. EDLING,
WILNA M. SHEPARD, HATTIE M. HOUCK,
RUTH M. HEBBERD, MINNIE N. McKEN-
ZIE, HOWARD H. McKENZIE, VERONICA K.
GHOSTLEY and H. W. LEWIS,

Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME I

(Pages 1 to 208, Inclusive)

Upon Appeals From the District Court of the United States
for the Southern District of California
Central Division

FILED

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CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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*Page number appearing at foot of Certified Transcript.

In the United States District Court for the
Southern District of California
Southern Division

In Equity No. 703

STANLEY B. HOUCK, RUBY E. EDLING, WILNA
M. SHERARD, HATTIE M. HOUCK, RUTH M.
HEBBARD, MINNIE N. McKENZIE, EDWARD
H. McKENZIE, and VERONICA K. GHOSTLEY,
Plaintiffs,

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMOND,
A. L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY, IRVIN S.
BARTHEL, R. UTTER, DOE ONE, DOE TWO,
DOE THREE, DOE FOUR, and DOE FIVE,
Defendants.

COMPLAINT

(To Quiet Title, for Injunction and Money Damages)

Now come the above named plaintiffs and complain of
the said defendants and say:

I.

That jurisdiction is founded on diversity of citizenship,
the existence of a Federal question and the amount in
controversy. [2]

II.

That the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00, and the action arises out of and under the laws of the United States, as hereinafter more fully appears, and particularly under Chapter VI, Title 32 of the Revised Statutes of the United States.

III.

That the plaintiffs are now and at all times herein mentioned were a voluntary association and each of them is a citizen of the United States and a resident of the State of Minnesota.

IV.

That the plaintiffs are informed and believe, and therefore allege, that each of the defendants is now, and at all times herein mentioned, has been, a citizen and a resident of the State of California, with the exception of the defendants, Willard Wallace and Edna M. Wallace each of whom, so plaintiffs are informed and believe, and therefore, allege, is and for a long time hitherto has been a resident of the State of Colorado.

V.

Plaintiffs are not aware of the true names or capacities, whether individual, corporate, associate or otherwise, of defendants, Doe One, Doe Two, Doe Three, Doe Four and Doe Five, and therefore sues said defendants by such fictitious names, and leave of court will be asked to amend this complaint to show their true names and capacities when same have been ascertained.

VI.

That for a long time hitherto, to-wit, ever since on or about the 6th day of September, 1945, the plaintiffs have been and now are the owners and entitled to the possession of those certain lands and premises situated in Imperial County, California, known and described under the following placer mining [3] claims all in Township 14 South, Range 12 East, San Bernardino Base and Meridian, and consisting of the numbers of acres, respectively, set opposite each name, to-wit:

<u>Name</u>	<u>Description</u>	<u>Acreage</u>
Frigid No. 1	NW $\frac{1}{4}$ of Section 29	160
Frigid No. 2	NE $\frac{1}{4}$ of Section 29	160
Frigid No. 3	SW $\frac{1}{4}$ of Section 29	160
Frigid No. 4	SE $\frac{1}{4}$ of Section 29	160
Temperate No. 1	NW $\frac{1}{4}$ of Section 21	160
Temperate No. 2	NE $\frac{1}{4}$ of Section 21	160
Temperate No. 3	SW $\frac{1}{4}$ of Section 21	160
Temperate No. 4	SE $\frac{1}{4}$ of Section 21	160
Tropical No. 1	NW $\frac{1}{4}$ of Section 28	160
Tropical No. 2	NE $\frac{1}{4}$ of Section 28	160
Tropical No. 3	SW $\frac{1}{4}$ of Section 28	160
Tropical No. 4	SE $\frac{1}{4}$ of Section 28	160
Torrid No. 1	NW $\frac{1}{4}$ of Section 20	160
Torrid No. 2	NE $\frac{1}{4}$ of Section 20	160
Torrid No. 3	SW $\frac{1}{4}$ of Section 20	160
Torrid No. 4	SE $\frac{1}{4}$ of Section 20	160

that said mines and mining claims have at all times contained and still contain very valuable montmorillonite

clay in large quantities, hereinafter referred to as said clay; that the exact monetary value of said clay on the said claims is to the plaintiffs unknown, but its value is certainly of not less than many hundreds of thousands of dollars.

VII.

That ever since on or about September 6, 1945, and for a long time prior thereto, the plaintiffs have conducted wide experiments and have employed chemists and other scientists all at an expense of many thousands of dollars to the plaintiffs, to determine the worth and value of the said clay in the [4] development and growth of animal and vegetable life and in the elimination or prevention of pests of all kinds; that during the whole of the said period the said plaintiffs have at a further cost and expense of many thousands of dollars developed an extensive market for the use of the said clay for the purposes aforesaid, and as a result of such experimentation and of the efforts so put forth by the plaintiffs, the plaintiffs have established an extensive market and a wide clientele through which and to whom said clay has been sold or otherwise distributed, and the plaintiffs have made valuable contracts with other persons to distribute and market the said clay, all at great profit to the plaintiffs; that during the past several months, but more particularly during the last few weeks and continuing up to the present date, plaintiffs have received numerous orders and requests for said clay in large quantities to be used for fertilizing large growing areas of plant life and to foster the growth and improve the quality of plant and animal life; that the present is the growing season for such plant and animal life and unless plaintiffs are able to supply the said clay

immediately and without any delay to the persons who ordered and are ordering the same from the plaintiffs the value of the said clay for the present growing season will be largely or entirely lost for many months and until another growing season arrives and the value which plaintiffs have developed in its present clientele will be lost or very materially reduced.

VIII.

That notwithstanding the ownership and right of possession so held by the said plaintiffs to the land and premises above described, all of which was and is well known to the defendants, the defendants have entered into and upon the said premises and have taken possession hereof and have employed agents and servants to extract said clay from the said land and premises [5] and said clay has been so extracted and either sold and marketed or otherwise used by the defendants in violation of the rights of the plaintiffs; that the said defendants personally and through their agents and servants have threatened the plaintiffs and their employees with bodily injury if the plaintiffs or their agents or servants enter upon the said premises, or attempt to extract any of said clay from the said premises; that such actions by the defendants have so terrified and frightened the servants, agents and employees of the plaintiffs that they have refused and still refuse to go upon the premises described in paragraph VI above, or to remove any clay therefrom or to engage in any development work thereon; that the said defendants in person and by their agents and servants

have both orally and in writing, advised the customers and clients and the prospective customers and clients of plaintiffs that the plaintiffs had and have no right or title and no right of possession of the said land and premises, and had and have no right to any of the said clay extracted therefrom, and the said defendants have further advised the customers and clients and prospective customers and clients of the plaintiffs not to pay plaintiffs for said clay and have declared that if such customers and clients accepted any of said clay from the plaintiffs that they, the said defendants, would hold such customers and clients of the plaintiffs liable in damages.

IX.

That the plaintiffs have requested said defendants to cease and desist from such threats and to cease and desist from such representations to the customers and clients and to the prospective customers and clients of plaintiffs, and the plaintiffs have requested the defendants to vacate the said land and premises and to permit the plaintiffs to again take possession thereof, but the defendants have failed and refused to abide by such requests so made by the plaintiffs, and the said defendants are still continuing with such threats and still continue to occupy the said [6] land and premises to the exclusion of the plaintiffs, and still continue to threaten to hold liable in damages the customers and clients of the plaintiffs, if such customers and clients accept any of the said clay from the plaintiffs and the defendants still continue to threaten the plaintiffs and their agents, servants and employees with bodily in-

jury, as aforesaid, if they enter upon said premises, and the defendants threaten to continue with such practices and will so continue with such practices unless they are restrained from so doing by decree of this Honorable Court.

X.

That plaintiffs are informed and believe and, therefore, allege that the reasonable market value of the said clay so removed by the defendants in violation of the rights of the plaintiffs as aforesaid, is more than \$3,000.00, but the exact value of said clay so removed is to the plaintiffs unknown and it will require an accounting to determine such value.

XI.

That it is impossible to determine the monetary extent of the damage which has already been done to the plaintiffs by the defendants; that immediate and irreparable injury, loss and damage will result to the plaintiffs before notice can be served and a hearing had on an application for a restraining order unless the defendants are restrained forthwith, all for the reasons specifically set out in paragraphs VII and VIII above.

XII.

That for the reasons aforesaid money damages will not compensate the plaintiffs for the injuries that they have sustained and that they will hereafter sustain at the hands of the defendants, and that the plaintiffs have no plain, or speedy or adequate remedy at law. [7]

Wherefore, plaintiffs pray that they may have judgment against the defendants as follows:

1. That the said lands and premises above described shall be adjudged to be the property of the plaintiffs, free and clear of any and all claims made or to be made thereto by the defendants or by anyone holding under them.
2. That an accounting may be taken of the value of all of said clay so removed from the said land and premises by the said defendants or by any of them, and that the plaintiffs have judgment therefor.
3. That the defendants and each of them, their servants, agents and employees be temporarily enjoined until final hearing herein and perpetually thereafter from interfering with the possession of said land and premises by the plaintiffs; from making any threats of bodily or other injuries as against the plaintiffs, their agents, servants or employees; and from withholding from the plaintiffs the possession of the said lands and premises.
4. For costs and for such other and further [8] relief as to the court seems meet and proper.

CANNON & CALLISTER

By David H. Cannon

Attorneys for Plaintiffs

[Verified.]

[Endorsed]: Filed Feb. 25, 1946. Edmund L. Smith,
Clerk. [9]

[Title of District Court and Cause]

ANSWER OF DEFENDANTS J. A. JOSE, OLGA JOSE, CORDA LANCASTER, WILLIAM LANCASTER AND GEORGE T. RENAKER

Come now the defendants J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster and George T. Renaker, and answering plaintiffs' complaint herein admit, deny and allege as follows:

I.

Answering paragraph I of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

II.

Answering paragraph II of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

III.

Answering paragraph VI of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained, except that said defendants admit that there is contained [10] in the land in Sections 20, 21, 28 and 29, Township 14 South, Range 12 East, San Bernardino Base and Meridian, deposits of montmorillonite clay in substantial quantities.

IV.

Answering paragraph VII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

V.

Answering paragraph VIII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VI.

Answering paragraph IX of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VII.

Answering paragraph X of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VIII.

Answering paragraph XI of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

IX.

Answering paragraph XII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

For a Further, Separate and Second Defense to Plaintiffs' Complaint, Defendants Allege:

I.

That the defendants now are and at all times herein mentioned were residents of the State of California. [11]

II.

That on or about the 17th day of January, 1946, the defendants located upon the public domain in the County of Imperial, State of California, mining claims covering Sections 20, 21, 28 and 29, Township 14, South, Range 12 East, San Bernardino Base and Meridian, and that the said land at said time was unappropriated public land, except insofar as it was covered by prior locations made by said defendants; that on the 17th day of January, 1946, said land, except as hereinabove stated, was open to location by any citizen of the United States of America, and that said defendants on the 17th day of January, 1946, located said land in the manner required by law, and have, subsequent thereto, proceeded with the discovery work in the manner required by law, and have expended the sum of \$1,000.00 in doing said work.

III.

That the defendants have been, ever since the year 1937, in possession of said land, pursuant to locations thereon made in the manner provided by law, and have, ever since 1937, when so required by the laws of the United States, performed annually the minimum amount of assessment work required to be done in order to retain title to said lands.

IV.

That due to the fact that there was a possible dispute as to whether or not the said defendants had validly located said land in 1937, and the land being open to entry other than for said 1937 locations, the defendants did, on the 17th day of January, 1946, locate said land and have in all respects complied with the laws dealing with location, discovery and work.

V.

That the said defendants are now the owners of said land through valid locations thereof, and that the plaintiffs have no right, title or interest therein or thereto. [12]

Wherefore, defendants pray that plaintiffs take nothing by reason of their complaint, that the defendants have judgment for their costs, and for all other, further and different relief as may be just, meet and proper in the premises.

MICHAEL F. SHANNON

THOMAS A. WOOD

Attorneys for Defendants J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster and George T. Renaker [13]

[Verified.]

Received copy of the within this 8 day of March, 1946.
Cannon & Callister, R.F., Attorneys for Plaintiffs.

[Endorsed]: Filed Mar. 19, 1946. Edmund L. Smith,
Clerk. [14]

[Title of District Court and Cause]

ANSWER OF DEFENDANTS ELLA JACKMAN,
JOHN I. JACKMAN AND JOHN S. PATTEN

Come now the defendants Ella Jackman, John I. Jackman and John S. Patten, and answering plaintiffs' complaint herein admit, deny and allege as follows:

I.

Answering paragraph I of plaintiff's complaint, defendants deny generally and specifically each and every allegation therein contained.

II.

Answering paragraph II of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

III.

Answering paragraph VI of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained, except that said defendants admit that there is [15] contained in the land in Sections 20, 21, 28 and 29, Township 14 South, Range 12 East, San Bernardino Base and Meridian, deposits of montmorillonite clay in substantial quantities.

IV.

Answering paragraph VII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

V.

Answering paragraph VIII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VI.

Answering paragraph IX of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VII.

Answering paragraph X of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

VIII.

Answering paragraph XI of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

IX.

Answering paragraph XII of plaintiffs' complaint, defendants deny generally and specifically each and every allegation therein contained.

For a Further, Separate and Second Defense to Plaintiffs' Complaint, Defendants Allege:

I.

That the defendants now are and at all times herein mentioned were residents of the State of California. [16]

II.

That on or about the 17th day of January, 1946, the defendants located upon the public domain in the County of Imperial, State of California, mining claims covering Sections 20, 21, 28 and 29, Township 14 South, Range 12 East, San Bernardino Base and Meridian, and that the said land at said time was unappropriated public land, except insofar as it was covered by prior locations made by said defendants; that on the 17th day of January, 1946, said land, except as hereinabove stated, was open to location by any citizen of the United States of America, and that said defendants on the 17th day of January, 1946, located said land in the manner required by law, and have, subsequent thereto, proceeded with the discovery work in the manner required by law, and have expended the sum of \$1,000.00 in doing said work.

III.

That the defendants have been, ever since the year 1937, in possession of said land, pursuant to locations thereon made in the manner provided by law, and have, ever since 1937, when so required by the laws of the United States, performed annually the minimum amount of assessment work required to be done in order to retain title to said lands.

IV.

That due to the fact that there was a possible dispute as to whether or not the said defendants had validly located said land in 1937, and the land being open to entry other than for said 1937 locations, the defendants did, on the 17th day of January, 1946, locate said land and have in all respects complied with the laws dealing with location, discovery and work.

V.

That the said defendants are now the owners of said land through valid locations thereof, and that the plaintiffs have no right, title or interest therein or thereto. [17]

Wherefore, defendants pray that plaintiffs take nothing by reason of their complaint, that the defendants have judgment for their costs, and for all other, further and different relief as may be just, meet and proper in the premises.

MICHAEL F. SHANNON
THOMAS A. WOOD

Attorneys for Defendants Ella Jackman, John I.
Jackman and John S. Patten [18]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 21, 1946. Edmund L. Smith,
Clerk. [19]

[Title of District Court and Cause]

STIPULATION

Come now H. W. Lewis, personally, and the other parties hereto by their respective attorneys as hereinafter set out and hereby stipulate and agree that this Honorable Court may make an order in the form hereto attached.

Dated: May 15, 1946.

H. W. LEWIS
CANNON & CALLISTER

By David H. Cannon

Attorneys for Plaintiffs

MICHAEL F. SHANNON
THOMAS A. WOOD

Attorneys for Defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, George T. Renaker, Ella Jackman, John I. Jackman, and John S. Patten

REYNOLDS & PAINTER

By Howard Painter

Attorneys for Defendants, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney, Irvin S. Barthel and Harris H. Hammond [20]

[Title of District Court and Cause]

ORDER

Upon reading and filing the foregoing Stipulation and good cause appearing, upon motion of David H. Cannon, one of the attorneys for the plaintiffs,

It Is Ordered, that H. W. Lewis be, and he is, hereby made a party plaintiff herein and that the complaint on file may be amended by interlineation as follows:

1. By adding the name of H. W. Lewis as [21] one of the plaintiffs.

2. By inserting in the complaint in paragraph III, line 8, page 2, following the word "plaintiffs", the words "(except the plaintiff H. W. Lewis)", who is now and at all times herein mentioned was an agent acting for and on behalf of the other plaintiffs.

Dated: May 18, 1946.

JACOB WEINBERGER

Judge

[Endorsed]: Filed May 20, 1946. Edmund L. Smith.
Clerk. [22]

[Title of District Court and Cause]

ANSWER AND COUNTERCLAIM OF DEFENDANTS HARRIS H. HAMMOND, A. L. BERGERE, J. C. BERGERE, WILLARD WALLACE, EDNA M. WALLACE, JAMES P. DELANEY, MARY J. DELANEY AND IRVIN S. BARTHEL

Come now the defendants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel, and answering the complaint of the plaintiffs, admit, deny, and allege as follows:

I.

Admit the allegations of paragraph I of said complaint.

II.

Admit the allegations of paragraph II of said complaint.

III.

Deny that at any of the times mentioned in said complaint or at any other time plaintiffs were or now are a voluntary association.

IV.

Answering paragraph IV of said complaint, these defendants admit that the defendants Willard Wallace and Edna M. Wallace [23] for a long time hitherto have been and now are residents of the State of Colorado; deny that each of the remaining defendants is now and/or at all times herein mentioned has been a citizen and/or a resident of the State of California, and allege that the defendants James P. Delaney, Mary J. Delaney, and

Irvin S. Barthel are now residents of the State of Colorado, and allege that the defendants Harris H. Hammond, A. L. Bergere, and J. C. Bergere are residents of the State of California.

V.

Admit the allegations of paragraph V of said complaint.

VI.

Answering paragraph VI of said complaint these defendants deny that for a long time hitherto, to wit, ever since on or about the 6th day of September, 1945, or at any other time the plaintiffs or any of them have been and/or now are the owners and/or entitled to the possession of the lands, premises, mines, and/or mining claims particularly described in said paragraph VI; allege that these defendants for a long time hitherto have been and now are the owners and entitled to the possession of all of the lands, premises, mines, and mining claims described and referred to in said paragraph VI; admit that said mines and mining claims have at all times and still contain very valuable montmorillonite clay in large quantities; admit that the monetary value of said clay on said claims is unknown; allege that these defendants are without knowledge or information sufficient to form a belief as to the value of said mines and mining claims and on that ground deny that the value thereof is not less than many hundreds of thousands of dollars, but allege that the value thereof is probably in excess of \$100,000.00.

VII.

These answering defendants are without knowledge or information sufficient to form a belief as to the truth

of the averments set forth in paragraph VII of said complaint, and on that ground deny [24] generally and specifically each and every allegation and averment contained in said paragraph VII.

VIII.

Deny generally and specifically each and every allegation and averment contained in said paragraph VIII of said complaint, save and except that these defendants admit that they have entered into and upon said lands and premises and have taken possession thereof and have employed agents and servants to extract clay from said lands and premises and that said clay has been so extracted by these defendants and a portion thereof has been sold and marketed by these defendants; allege that these defendants have so entered upon said lands and extracted and sold said clay for the reason that these defendants were at the times said acts were performed and now are the owners and entitled to possession of said lands and premises and of the clay so extracted therefrom.

IX.

Deny generally and specifically each and every allegation and averment contained in paragraph IX of said complaint, save and except that these defendants admit that they have refused to vacate said lands and premises and that they have refused to permit the plaintiffs or any of them to take possession thereof, and admit that these defendants still continue to occupy said lands and premises and allege that these defendants occupy said lands and premises as owners thereof and are entitled to such occupancy.

X.

Deny generally and specifically each and every allegation and averment contained in paragraph X of said complaint.

XI.

Deny generally and specifically each and every allegation and averment contained in paragraph XI of said complaint.

XII.

Deny generally and specifically each and every allegation and averment contained in paragraph XII of said complaint.

And by Way of Counterclaim Against the Plaintiffs, these answering defendants allege as follows:

I.

That jurisdiction is founded on diversity of citizenship, the existence of a Federal question, and the amount in controversy.

II.

That the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00, and the action arises out of and under the laws of the United States, as hereinafter more fully appears, and particularly under Chapter VI, Title 32 of the Revised Statutes of the United States.

III.

That the defendants Harris H. Hammond, A. L. Bergere, and J. C. Bergere are residents of the State of California, and that the defendants Willard Wallace,

Edna M. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel are residents of the State of Colorado. These defendants are informed and believe and upon such information and belief allege that the plaintiffs are residents of the State of Minnesota.

IV.

That for a long time hitherto these answering defendants have been and now are the owners and entitled to the possession of those certain lands and premises situated in the County of Imperial, State of California, known and described under the following Placer Mining Claims, all in Township 14 South, Range 12 East, San Bernardino Base and Meridian, and consisting of the number of acres respectively set opposite each name, to wit:

<u>Name</u>	<u>Description</u>	<u>Acreage</u>
Frigid No. 1	NW $\frac{1}{4}$ of Section 29	160 [26]
Frigid No. 2	NE $\frac{1}{4}$ of Section 29	160
Frigid No. 3	SW $\frac{1}{4}$ of Section 29	160
Frigid No. 4	SE $\frac{1}{4}$ of Section 29	160
Temperate No. 1	NW $\frac{1}{4}$ of Section 21	160
Temperate No. 2	NE $\frac{1}{4}$ of Section 21	160
Temperate No. 3	SW $\frac{1}{4}$ of Section 21	160
Temperate No. 4	SE $\frac{1}{4}$ of Section 21	160
Tropical No. 1	NW $\frac{1}{4}$ of Section 28	160
Tropical No. 2	NE $\frac{1}{4}$ of Section 28	160
Tropical No. 3	SW $\frac{1}{4}$ of Section 28	160
Tropical No. 4	SE $\frac{1}{4}$ of Section 28	160
Torrid No. 1	NW $\frac{1}{4}$ of Section 20	160
Torrid No. 2	NE $\frac{1}{4}$ of Section 20	160
Torrid No. 3	SW $\frac{1}{4}$ of Section 20	160
Torrid No. 4	SE $\frac{1}{4}$ of Section 20	160

V.

That the plaintiffs and each of them claim some right, title, estate, interest, demand, or lien as owners, encumbrancers, or otherwise in, to, or upon the lands and premises above described adversely to these defendants; that said claims are without any right or foundation and are null and void and that the plaintiffs have no right, title, estate, interest, demand, lien, or claim whatsoever in, to, or upon said lands and premises or any part thereof.

Wherefore, these defendants pray that plaintiffs take nothing by reason of their complaint herein, and that the Court render judgment in favor of these defendants against the plaintiffs as follows:

1. That the plaintiffs be required to set forth the nature of their respective claims; that it be declared and adjudged that the plaintiffs have no right, title, estate, interest, claim, demand, or lien whatever in, to, or upon said lands and premises, or any [27] portion thereof, and that said claims, of whatever nature, be adjudged null and void;
2. That the plaintiffs herein be forever enjoined and debarred from asserting any right, title, estate, interest, claim, demand, or lien whatever in, to, or upon said lands and premises, or any portion thereof, adversely to the plaintiffs;
3. That the defendants be declared the sole owners in fee simple of said lands and premises, and that the title of the defendants in said lands and premises be declared

good and valid and free of each and every claim of whatever nature of plaintiffs; and

4. For defendants' costs of suit herein, and for such other and further relief as may seem to the Court just and proper in the premises.

Dated: May 31, 1946.

REYNOLDS & PAINTER

By Howard Painter

Attorneys for Answering Defendants [28]

[Verified.] [29]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 5, 1946. Edmund L. Smith,
Clerk. [30]

In the United States District Court for the
Southern District of California
Southern Division

6105-Y
In Equity No. 703

STANLEY B. HOUCK, et al.,

Plaintiffs,

vs.

J. A. JOSE, et al.,

Defendants.

HARRIS H. HAMMOND, A. L. BERGERE, J. C.
BERGERE, WILLARD WALLACE, EDNA M.
WALLACE, JAMES P. DELANEY, MARY J.
DELANEY and IRVIN S. BARTHEL,

Cross-Claimants,

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER
and JOHN S. PATTEN,

Cross-Defendants.

CROSS-CLAIM OF HARRIS H. HAMMOND, A. L.
BERGERE, J. C. BERGERE, WILLARD WAL-
LACE, EDNA M. WALLACE, JAMES P. DE-
LANEY, MARY J. DELANEY and IRVIN S.
BARTHEL

Come now the defendants Harris H. Hammond, A. L.
Bergere, J. C. Bergere, Willard Wallace, Edna M. Wal-

lace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, as cross-claimants herein, and pursuant to an order of the above entitled court, file this their cross-claim against the cross-defendants above named and state as follows: [31]

I.

That jurisdiction is founded on diversity of citizenship, the existence of a Federal question, and the amount in controversy.

II.

That the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00, and the action arises out of and under the laws of the United States, as hereinafter more fully appears, and particularly under Chapter VI, Title 32 of the Revised Statutes of the United States.

III.

That the cross-claimants Harris H. Hammond, A. L. Bergere, and J. C. Bergere are residents of the State of California, and that the cross-claimants Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel are residents of the State of Colorado. These cross-claimants are informed and believe and upon such information and belief allege that the cross-defendants above named are residents of the State of California.

IV.

That for a long time hitherto the cross-claimants have been and now are the owners and entitled to the possession of those certain lands and premises situated in the County of Imperial, State of California, known and described under the following Placer Mining Claims, all in

Township 14 South, Range 12 East, San Bernardino Base and Meridian, and subject only to the paramount title of the United States of America, and consisting of the number of acres respectively set opposite each name, to wit:

<u>Name</u>		<u>Description</u>	<u>Acreage</u>
Horseshoe No. 2		NW $\frac{1}{4}$ of Section 29	160
" " 1		NE $\frac{1}{4}$ of Section 29	160
" " 4		SW $\frac{1}{4}$ of Section 29	160
" " 3		SE $\frac{1}{4}$ of Section 29	160
Platte	" 2	NW $\frac{1}{4}$ of Section 21	160
			[32]
Platte	No. 1	NE $\frac{1}{4}$ of Section 21	160
" " 4		SW $\frac{1}{4}$ of Section 21	160
" " 3		SE $\frac{1}{4}$ of Section 21	160
Silverheels No. 2		NW $\frac{1}{4}$ of Section 28	160
" " 1		NE $\frac{1}{4}$ of Section 28	160
" " 4		SW $\frac{1}{4}$ of Section 28	160
" " 3		SE $\frac{1}{4}$ of Section 28	160
Gunnison	" 2	NW $\frac{1}{4}$ of Section 20	160
" " 1		NE $\frac{1}{4}$ of Section 20	160
" " 4		SW $\frac{1}{4}$ of Section 20	160
" " 3		SE $\frac{1}{4}$ of Section 20	160

V.

That the cross-defendants above named, and each of them, claim some right, title, estate, interest, demand, or lien as owners, encumbrancers, or otherwise in, to, or upon the lands and premises above described adversely to these cross-claimants; that said claims are without any right or foundation and are null and void and that the cross-defendants have no right, title, estate, interest, demand, lien, or claim whatsoever in, to, or upon said lands and premises or any part thereof.

Wherefore, these cross-claimants pray that the court render judgment in favor of these cross-claimants against the cross-defendants as follows:

1. That the cross-defendants be required to set forth the nature of their respective claims; that it be declared and adjudged that the cross-defendants have no right, title, estate, interest, claim, demand, or lien whatever in, to, or upon said lands and premises, or any portion thereof, and that said claims, of whatever nature, be adjudged null and void;
2. That the cross-defendants herein be forever enjoined and debarred from asserting any right, title, estate, interest, claim, demand, or lien whatever in, to, or upon said lands and pre- [33] mises, or any portion thereof, adversely to the cross-defendants.
3. That the cross-claimants be declared the sole owners of said lands and premises, subject only to the paramount title of the United States of America, and that the title of the cross-claimants in said lands and premises be declared good and valid and free of each and every claim of whatever nature of cross-defendants; and
4. For cross-claimants' costs of suit herein, and for such other and further relief as may seem to the court just and proper in the premises.

Dated: December 5th, 1946.

REYNOLDS & PAINTER and
W. W. KAYE

By Howard Painter

Attorneys for Cross-Claimants [34]

[Verified.]

[Endorsed]: Filed Jan. 14, 1947. Edmund L. Smith,
Clerk. [35]

[Title of District Court and Cause]

ANSWER TO CROSS-CLAIM OF
HARRIS H. HAMMOND ET AL.

Come now the cross-defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, and answering cross-claimants' cross-claim, admit, deny and allege as follows, to wit: [36]

I.

Answering paragraph IV of cross-claimants' cross-claim, cross-defendants deny generally and specifically each and every allegation therein contained.

II.

Answering paragraph V of cross-claimants' cross-claim, the cross-defendants admit that they and each of them claim some right, title, estate and interest in and to the property described in cross-claimants' cross-claim, but deny that said claims are without any right or foundation and are null and void and that cross-defendants have no right, title, estate, interest, demand, lien or claim in and to said land and premises known and described as Sections 29, 21, 28 and 20, all in Township 14 South, Range 12 East, San Bernardino Base and Meridian; that the cross-defendants assert that they are now and for a long time past have been the owners of and entitled to the possession of said land, subject only to the paramount title of the United States of America, and that the cross-claim-

ants do not have any right, title, interest or lien therein or thereon in any manner, or at all.

Wherefore, cross-defendants pray that the court render judgment:

That the cross-claimants have no right, title or interest in or to said land, and that the cross-defendants are now the owners and holders thereof, subject only to the paramount title of the United States of America;

That the title of the cross-defendants in said land and premises be declared good, valid and free of each and every claim, of whatever nature, of cross-claimants;

For cross-defendants' costs of suit herein, and for such other, further and different relief as may seem to the court just and proper in the premises.

MICHAEL F. SHANNON
THOMAS A. WOOD

Attorneys for Cross-Defendants [37]

[Verified.] [38]

Received copy of the within answer to cross-claim this 22nd day of January, 1947. Reynolds & Painter, by H. V. Jacobson, Attorneys for Cross-Claimants.

[Endorsed]: Filed Jan. 23, 1947. Edmund L. Smith,
Clerk. [39]

[Title of District Court and Cause]

STIPULATION SUBSTITUTING PARTIES
PLAINTIFF

It is hereby stipulated by and between Orris R. Hedges, attorney for the plaintiffs; and Reynolds and Painter and William W. Kaye, attorneys for the defendants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel; and Michael F. Shannon and Thomas A. Wood, attorneys for J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, George T. Renaker, Ella Jackman, John I. Jackman and John S. Patten; that Hattie M. Houck, as Administrator of the Estate of Stanley B. Houck, deceased, may be substituted as a party plaintiff in the above-entitled action in the place and stead of Stanley B. Houck.

Dated: April 9, 1947.

ORRIS R. HEDGES

Attorney for Plaintiffs

REYNOLDS AND PAINTER

WILLIAM W. KAYE

By Howard Painter [40]

MICHAEL F. SHANNON

THOMAS A. WOOD

By Thomas A. Wood

Attorneys for Defendants

ORDER

Upon reading the foregoing Stipulation and good cause appearing therefrom, it is hereby ordered that Hattie M. Houck, as Administrator of the Estate of Stanley B. Houck, deceased, be, and she is hereby, substituted as one of the parties plaintiff in the above-entitled action in the place and stead of Stanley B. Houck.

Dated April 14, 1947.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Apr. 14, 1947. Edmund L. Smith,
Clerk. [41]

[Title of District Court and Cause]

ORDER FOR JUDGMENT AND FINDINGS

The above-entitled cause heretofore tried, argued and submitted, is now decided as follows:

Upon the grounds stated in the opinion this day filed, judgment will be for the plaintiffs quieting their title to the claims in suit and that the defendants and cross-complainants take nothing by their cross-claims.

Findings will be prepared by counsel for the plaintiffs under Local Rule 7.

Dated this 14th day of June, 1947.

LEON R. YANKWICH

Judge

Counsel notified.

[Endorsed]: Filed Jun. 14, 1947. Edmund L. Smith,
Clerk. [42]

[Title of District Court and Cause]

OPINION

Appearances:

For the Plaintiffs: Orris W. Hedges, Esq., Monta W. Shirley, Esq., Los Angeles, California.

For the Defendants: William W. Kaye, Esq., Reynolds & Painter, Esqs., by Howard Painter, for Defendants Hammond et al. Michael F. Shannon, Esq., Thomas A. Wood, Esq., for Defendants Jose et al., Los Angeles, California. [43]

Yankwich, District Judge:—

By their Complaint, Stanley B. Houck and others seek to quiet title to sixteen placer mining claims containing deposits of montmorillonite, all located in Imperial County, California, and being in Township 14 South, Range 12 East, San Bernardino Base and Meridian.

At the trial I expressed doubt whether one who has no greater interest than a mining location could bring an action to quiet title. A further study of the problem has led me to the conclusion that the action is maintainable under the recognized principle that one who is in the process of acquiring a title to public lands has a property right which may be protected either by an action for ejectment or one to quiet title. (See, Gauthier v. Morrison, 1913, 232 U. S. 452; Fox Film Corporation v. Doyal, 1932, 286 U. S. 123, 129; Martin v. Bartmus, 1922, 189 C. 87.)

Each mining claim consists of 160 acres. Two groups of defendants, to be referred to as the Jose group, headed by J. A. Jose and the Hammond group, headed by Harris

H. Hammond, have answered denying the title of the plaintiffs. Each of the three groups claims title for itself. The plaintiffs, to be referred to as the Houck group, and the Hammond group rely on locations made on September 7, 1945, the first day on which placer claims could be located on the lands after they had been withdrawn from entry, first by the Secretary of the Interior as far back as 1920, and later by presidential decree which reserved them for use as a firing range [44] during the war. The Jose group, originally asserting some rights under claims dating back to 1937, when the lands were not open to entry, now ground their claim upon locations made on January 17, 1946.

Considering the first two groups, Houck and Hammond together, I am of the view that the Houck claimants have shown, by a preponderance of the evidence, full compliance with Sections 2303 and 2304 of the Public Resources Code of California and with Sections 35 and 36 of Title 30 U. S. C. A. (See, United States v. Sherman, 1923, 8 Cir., 288 Fed. 497; Alaska Consolidated Oil Fields v. Rains, 1932, 9 Cir., 54 F. (2) 868, 870-871.) The photographic evidence shows that the boundaries were clearly marked with posts which indicated the sections claimed, that notices of location of the placer claims were posted, placed in jars near the post where they could not be destroyed by the elements, that the posting of each notice was witnessed by at least two witnesses, each of whom indicated to the minute the time of the posting. This was not only a compliance with the exact wording of the statute, but was also what mining authorities consider good practice. Ricketts says that "the location notices should be posted at the discovery point and it is customary to protect it from the elements in a

box, tin can or cairn in plain view." (Manner of Locating and Holding Mineral Claims in California, 1946, by A. H. Ricketts, with revisions as of July, 1946, by C. H. Logan; and see, Ricketts, American Mining Law, 4th Ed., 1943, Secs. 616, 695.) [45]

Each notice contained a statement of the markings of the boundaries by reference to surveyed sections. A duplicate copy of each was duly recorded within the ninety day period in the County Recorder's Office of Imperial County and re-recorded after the discovery work was performed.

There is adequate evidence of work performed in compliance with the statutes, substantiated by the payroll book and by testimony of credible witnesses, including the manager of the Bank at Brawley, who witnessed the act of paying the foreman and the Mexican laborers who performed the work.

While the Hammond group claims to have located the same claims on September 7th, it is quite evident that the usual procedure of posting the claims and recording them afterwards was not followed. The form they used is a Colorado form and the fact that the instruments were all recorded at the same time,—at ten o'clock A. M., September 7, 1945, indicates that an unsuccessful attempt was made to comply with the law. Counsel for this group concede as much when they claim now that the only object in introducing the recorded claims was to show that notices of claims so worded were posted on stakes driven into the ground. A weather-beaten copy of one notice has been brought into court. An examination of it under a powerful magnifying glass shows that it could not possibly have been signed by the claimants, for no traces of ink are discernible.

It is clear that the claimants did not make any effort to "protect the notice" (See, Ricketts, American Mining [46] Law, 4th Ed., 1943, Sec. 695). The evidence as to the driving in of the stakes is equally unsatisfactory. We do not have on these notices the details which we have in the others. So that, assuming that this group performed the development work required, the Court, having to choose between two claimants who trace their claims to the same date, must, perforce, favor the group which shows more substantial compliance with the law and produces the strongest evidence of satisfying all the requirements as to locations. The fact that it was attempted later on to complete this location by recording a so-called "amended notice" of location which contained a delineation of the boundaries and a description of the work done cannot cure the insufficient proof of compliance by this group. For this amended notice was not "a true copy of the notice" as required by Section 2313 of the Resources Code, but an "amended notice" containing the additional matters just mentioned, which were not on the posted notice. (See Brown v. Gurney, 1906, 201 U. S. 184, 191.) While amended location notices are allowed (California Resources Code, Section 2310) they cannot, by the very wording of this section, interfere with "the existing rights of others at the time of posting and filing the amended location notices". And a recording before posting is also subject to intervening rights. (Ricketts, American Mining Law, 4th Ed., 1943, Sec. 698.)

The Jose group, which, as already stated, originally based its claim upon an attempted location in 1937, when the lands were not subject to entry, now claims rights under [47] notices of location dated January 17, 1946. After that date, they entered upon the claims and did

work of improvement. They also challenge the adequacy of the work done by the other groups on the basis of engineering measurements made long after the work was done.

I believe that satisfactory evidence of the type produced by the Houck group should not be disregarded on the basis of theoretical computations made later by interested parties,—especially when the evidence as to the work done is uncontradicted and the expenditure of money is evidenced by payroll books and by other credible testimony.

The only question which this group of claimants raised in my mind arose from their reference to United States Borax Co. v. Ickes, 1938, U. S. Ap. D. C., 98 F. (2) 271. They seemed to contend, as I understood them, at the trial, and as they assert in a letter written to me since the trial in answer to a comment by other counsel on the same case, that, under this decision, "there could be included no more than 20 acres for each individual locator", and that, consequently the work had to be done on each 20 acres.

Further study of the case leads me to the conclusion that it does not apply to the situation before us. The court there was dealing with a group of persons who, after locating several placer claims, transferred them to one person who attempted to do the work. And the Court held that the limitation to persons who are not a part of an association applied. The gist of the decision is on pages 278-281 of 98 F. (2), and need not be reproduced here. [48]

Several things are quite evident from this ruling: (1) The Court holds that the requirement as to discovery on

each of the 20-acre tracts applies only to "a non-association claimant either individual or corporate". (2) As distinctly, the Court determines that an association of persons could still claim as separate locations acreage equivalent to 160 acres for each person in the association. (3) The case has no bearing on Sections like 2304 and 2305 of the California Resources Code. We particularize.

The acreage limitation merely means that a single mining location by an association cannot exceed 160 acres. But an association is not limited to one location. It may make distinct locations, not exceeding 160 acres, of contiguous lands. (*Smelting Company v. Kemp*, 1881, 104 U. S. 636; *Tucker v. Masser*, 1885, 113 U. S. 203; *Peabody Gold Mining Co. v. Gold Hills Mining Co.*, 1901, 9 Cir., 111 Fed. 817, 820; *Nome & Sinook Co. v. Snyder*, 1911, 9 Cir., 187 Fed. 385, 388.)

In *Nome & Sinook v. Snyder*, *supra*, our Circuit Court of Appeals quotes with approval the following statement from the Supreme Court of Colorado in *Kirk et al. v. Meldrum*, 1901, 28 Colo. 453, 460, 65 Pac. 633, 636:

"The construction of the act of Congress with respect to placers has universally been that the act makes provision for such locations, and prescribes the area which may be located,—in other words, the area is limited to 20 acres to each locator,—and that a number of individuals may locate a claim in common not exceeding 20 acres [49] to each person, and not exceeding 160 acres in any one claim." (Emphasis added.)

As said by the late District Judge Robert S. Bean of Oregon, while sitting in this district, in *United States v. California Midway Oil Co.*, 1919, D. C. Calif., 259 Fed. 343, 351:

"there is so far no law of Congress or regulation made in pursuance thereof limiting the number of placer mining claims an individual or association of individuals may make. On the contrary, the policy of the government seems to be to encourage the development of its mineral resources and to offer every facility for that purpose." (Emphasis added.)

The same judge, in a prior case, also decided in our district, *United States v. Brookshire Oil Company*, 1917, D. C. Calif., 242 Fed. 718, 721, interprets the meaning of the acreage limitation in the manner stated in this opinion.

"It is true that there is no limitation as to the number of mining claims an individual or association of individuals may locate, but it is provided that no claim shall exceed 20 acres for each individual (Section 2331, R. S. (Comp. St. 1916, Sec. 4630)) or 160 acres for any association. Section 2330, R. S. (Comp. St. 1916, Sec. 4629). This is a direct and positive limitation of the amount of mining ground any one claimant may appropriate individually or as a member of an association in any one claim, and he cannot evade the law by the use of the names of his friends, relatives, or employees. Any device whereby one person is to acquire more than 20, or an association more than 160, acres in area, by one discovery constitutes a fraud upon the government and is without legal support and void." (Emphasis added.)

Ricketts writes:

"The mining law prescribes a limitation of the size of a location, but there is no limit as to the number thereof that an individual, association of per-

sons, or a corporation may locate or acquire except in Alaska, Oregon and formerly in Nevada. A mining claim may include as many adjoining locations as the owner may acquire by location or otherwise, and the ground covered by all will constitute a 'mining claim' and is so designated. The terms 'location' and 'mining claim', however, are often used indiscriminately to denote the same thing." (Emphasis added.)

The conclusion is, therefore, inevitable that the plaintiffs could legally locate several claims of 160 acres each as association claims, and, having done so, they were not required to do work as to each claim on each 20 acre piece. The rule is firmly established in California and in the Ninth Circuit that work done on each 160 acre parcel of a group of claims is full compliance with the law. This for the reason "that the law does not require the annual work on each 20 [51] lot of an association claim." (Rooney v. Barnette, 1912, 9 Cir., 200 Fed. 700, 708; and see, Union Oil Co. v. Smith, 1919, 249 U. S. 337, 350 et seq.; Anvil Hydraulic & Drainage Co. v. Code, 1910, 9 Cir., 182 Fed. 205; Consolidated Mutual Oil Co. v. United States, 1917, 9 Cir., 245 Fed. 251; United States v. California Midway Oil Co., 1922, 9 Cir., 289 Fed. 516 (especially concurring opinion of Judge Ross); Reeder v. Mills, 1923, 62 C. A. 581; see also, Alaska Consolidated Oil Fields v. Rains, 1932, 9 Cir., 54 F. (2) 868, 890-891.)

This is also the general rule. (Ricketts, American Mining Law, 4th Ed., 1943, Sec. 488.)

Little need be added on the contention stressed in counsel's letter that the Jose claimants are the only ones who

have proved full compliance with the requirements of Sections 2304 and 2305 of the California Resources Code. I have already indicated why I believe that the plaintiffs have shown substantial compliance with these sections.

One observation, however, should be made. When we are dealing with an adversary proceeding between the United States and a claimant, a different rule applies than when we are passing on the right of conflicting claimants. No presumptions are indulged in favor of a claimant, even in possession, against the United States. But as between a locator in [52] possession and a subsequent intruding locator, the law favors the locator who, in good faith, occupies mineral lands and does improvement work on them against the intruder who goes on the land which he knows has been located, claimed and occupied by another and tries to oust him by doing discovery work of his own. (See, Union Oil Co. v. Smith, 1919, 249 U. S. 337, 346; Rooney v. Barnette, 1912, 9 Cir., 200 Fed. 700; Cole v. Ralph, 1920, 252 U. S. 286, 287; United States Borax Co. v. Ickes, 1938, U. S. App. D. C., 98 F. (2) 271, 274; Ricketts, op. cit., Sections 731, 732, 734, 1101, 1102, 1112. And see my opinion in United States v. Mobley, 1942, D. C. Calif., 45 Fed. Sup. 407, 408-410.)

Judgment will, therefore, be for the plaintiffs quieting their title to the claims in suit and that the defendants and cross-complainants take nothing by the cross-claims.

Dated this 14th day of June, 1947.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jun. 14, 1947. Edmund L. Smith,
Clerk. [53]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 3rd [54] day of June, 1947, and continued on trial for successive days thereafter to and including the 5th day of June, 1947, before the Honorable Leon R. Yankwich, Judge Presiding, the Court sitting without a jury, a jury having been expressly waived, Orris R. Hedges, Esq. and Monta W. Shirley, Esq., appearing for the plaintiffs, and Reynolds & Painter, by Howard Painter, Esq., and William W. Kaye, Esq., appearing for the defendants and cross-claimants, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, and Michael F. Shannon, Esq. and Thomas A. Wood, Esq., by Thomas A. Wood, Esq., appearing for the defendants and cross-defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten; and evidence, both oral and documentary, having been introduced and the cause submitted for decision, and the Court having heretofore rendered its written opinion, now makes its Findings of Fact, as follows:

FINDINGS OF FACT

I.

That it is true that jurisdiction of the Court is founded on diversity of citizenship, the existence of a Federal question, and the amount in controversy.

II.

That it is true that the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00), and the action arises out of and under the laws of the United States, to wit, Chapter VI, Title 32, of the Revised Statutes of the United States.

III.

That it is true that the plaintiffs are now, and at all times mentioned in plaintiffs' complaint were, a voluntary association, and that it is true that each of the plaintiffs was at the time of the filing of plaintiffs' complaint, a citizen of the United States and a resident of the State of Minnesota. [55]

IV.

That it is true that each of the defendants was, at the time of filing of plaintiffs' complaint, a citizen and resident of the State of California, with the exception of the defendants Willard Wallace and Edna M. Wallace, each of whom was then a resident of the State of Colorado.

V.

That it is true that on the 7th day of September, 1945, the plaintiffs were the owners and entitled to the possession of those certain lands and premises situated in the County of Imperial, State of California, known and described under the following Placer Mining Claims, all in Township 14 South, Range 12 East, San Bernardino Base and Meridian, and consisting of the numbers of acres, respectively, set opposite each name, to wit:

<u>Name</u>	<u>Description</u>	<u>Acreage</u>
Frigid No. 1	NW $\frac{1}{4}$ of Section 29	160
Frigid No. 2	NE $\frac{1}{4}$ of Section 29	160
Frigid No. 3	SW $\frac{1}{4}$ of Section 29	160
Frigid No. 4	SE $\frac{1}{4}$ of Section 29	160
Temperate No. 1	NW $\frac{1}{4}$ of Section 21	160
Temperate No. 2	NE $\frac{1}{4}$ of Section 21	160
Temperate No. 3	SW $\frac{1}{4}$ of Section 21	160
Temperate No. 4	SE $\frac{1}{4}$ of Section 21	160
Tropical No. 1	NW $\frac{1}{4}$ of Section 28	160
Tropical No. 2	NE $\frac{1}{4}$ of Section 28	160
Tropical No. 3	SW $\frac{1}{4}$ of Section 28	160
Tropical No. 4	SE $\frac{1}{4}$ of Section 28	160
Torrid No. 1	NW $\frac{1}{4}$ of Section 20	160
Torrid No. 2	NE $\frac{1}{4}$ of Section 20	160
Torrid No. 3	SW $\frac{1}{4}$ of Section 20	160
Torrid No. 4	SE $\frac{1}{4}$ of Section 20	160

VI.

That it is true that said Mining Claims have, at all times mentioned in plaintiffs' complaint, contained, and still contain, very valuable [56] montmorillonite clay in large quantities, and that its value is well in excess of Three Thousand Dollars (\$3,000.00).

VII.

That it is true that the plaintiffs fully complied with Sections 2303 and 2304 of the Public Resources Code of California, and with Sections 35 and 36 of Title 30, U. S. C. A.

VIII.

That it is true that the plaintiffs clearly marked the boundaries of said property with posts which indicated the

Sections claimed, and that Notices of Location of Placer Claims were posted and placed in jars near the post where they could not be destroyed by the elements, all in accordance with good recognized mining practice.

IX.

That it is true that each notice so posted by plaintiffs contained a statement of the markings of the boundaries by reference to surveyed Sections, and that a duplicate copy of each notice was duly recorded, within ninety (90) days from date of posting, in the County Recorder's Office of Imperial County, California.

X.

That it is true that plaintiffs performed the necessary discovery work upon each of said Claims within the time permitted by law.

XI.

That it is true that the plaintiffs have expended many thousands of dollars to determine the worth and value of the montmorillonite clay in the development and growth of animal and vegetable life and in the elimination and prevention of pests of all kinds.

XII.

That it is true that at all times mentioned in plaintiffs' complaint plaintiffs have, at further cost and expense, developed an extensive market for the use of the said montmorillonite clay, and as a result of such experimentation and of the efforts so put forth by plaintiffs, have established an extensive market and wide clientele through which and to whom said mont- [57] morillonite clay has been sold or otherwise distributed.

XIII.

That it is true that the defendants entered into and upon the premises described in plaintiffs' complaint and attempted to take possession thereof and employed agents and servants to extract montmorillonite clay from said land and premises.

XIV.

That it is not true that the defendants extracted, sold and marketed, or otherwise used, said montmorillonite clay.

XV.

That it is not true that the defendants personally, or through their agents and servants, threatened the plaintiffs or their employees with bodily injury if plaintiffs or their agents or servants entered upon said premises or attempted to extract any of said montmorillonite clay therefrom.

XVI.

That it is not true that defendants' actions terrified and frightened plaintiffs' servants, agents and employees.

XVII.

That it is not true that the defendants, either in person or through their agents and servants, advised plaintiffs' customers and clients, and prospective clients, to the effect that plaintiffs had no right, title or interest in and to said premises and were not entitled to possession thereof or to extract montmorillonite clay therefrom.

XVIII.

That it is not true that defendants advised plaintiffs' prospective customers and clients not to pay plaintiffs for said montmorillonite clay, or that if said customers and clients accepted any of said montmorillonite clay from plaintiffs that defendants would hold such customers and clients of plaintiffs liable in damages.

XIX.

That it is not true that plaintiffs have requested defendants to cease and desist from such threats and to cease and desist from such [58] representations to the customers and clients, and to the prospective customers and clients of plaintiffs.

XX.

That it is true that plaintiffs have requested defendants to vacate said land and premises and to permit plaintiffs to again take possession thereof.

XXI.

That it is true that defendants have not removed montmorillonite clay from said premises.

XXII.

That it is true that plaintiffs have not sustained any monetary damages in the premises.

XXIII.

That it is true that plaintiffs have no plain, or speedy or adequate remedy at law.

XXIV.

That all of the denials of defendants' answers and all of the allegations and averments of said answers, and all the allegations and averments of defendants' cross-claims, adverse to and inconsistent with these Findings, are untrue.

CONCLUSIONS OF LAW

And as Conclusions of Law From the Foregoing Facts, the Court Finds:

I.

That the plaintiffs are the owners and entitled to possession of those certain Mining Claims described in plaintiffs' complaint.

II.

That the plaintiffs are entitled to a judgment quieting their title to said Mining Claims against the defendants and cross-claimants.

III.

That the defendants and cross-claimants are entitled to take nothing by reason of their said cross-claims and cross-complaint. [59]

IV.

That the plaintiffs are entitled to their costs of suit incurred herein.

Judgment is hereby ordered to be entered accordingly.

Dated: July 2, 1947.

LEON R. YANKWICH

United States District Judge

The foregoing Findings of Fact and Conclusions of Law are approved as to form: Reynolds & Painter and William W. Kaye, by, Attorneys for Defendants and Cross-Claimants. Michael F. Shannon and Thomas A. Wood, by, Attorneys for Defendants and Cross-Defendants. [60]

Received copy of the within Findings of Fact, etc., this 27 day of June, 1947. Michael F. Shannon, Thomas A. Wood, by N. Featherstone, Attorneys for Defs. Jose et al.

Received copy of the within Findings of Fact, etc., this 27 day of June, 1947. Reynolds, Painter & Cherniss, by Louis Miller, Attorneys for Defendants.

[Endorsed]: Filed Jul. 11, 1947. Edmund L. Smith,
Clerk. [61]

In the United States District Court for the
Southern District of California
Central Division

In Equity No. 6105-Y

STANLEY B. HOUCK, RUBY E. EDLING, WILNA
M. SHEPARD, HATTIE M. HOUCK, RUTH M.
HEBBARD, MINNIE N. MCKENZIE, HOW-
ARD H. MCKENZIE, and VERONICA K.
GHOSTLEY,

Plaintiffs,

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMOND,
A. L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY, IRVIN S.
BARTHEL, R. UTTER, et al.,

Defendants.

HARRIS H. HAMMOND, A. L. BERGERE, J. C.
BERGERE, WILLARD WALLACE, EDNA M.
WALLACE, JAMES P. DELANEY, MARY J.
DELANEY and IRVIN S. BARTHEL,

Cross-Claimants,

vs.

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER
and JOHN S. PATTEN,

Cross-Defendants.

DECREE QUIETING TITLE

The above entitled cause came on regularly for trial on the 3rd day of June, 1947, before the Honorable Leon R. Yankwich, Judge Presiding, [62] the Court sitting without a jury, a jury having been expressly waived, Orris R. Hedges, Esq. and Monta W. Shirley, Esq., appearing for the plaintiffs, and Reynolds & Painter, by Howard Painter, Esq., and William W. Kaye, Esq., appearing for the defendants and cross-claimants, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, and Michael F. Shannon, Esq., and Thomas A. Wood, Esq., by Thomas A. Wood, Esq., appearing for the defendants and cross-defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, and the action having been dismissed as to all the fictitious defendants; and evidence, both oral and documentary, having been introduced and the cause submitted for decision, and the Court having heretofore rendered its written opinion and heretofore made and caused to be filed herein its written Findings of Fact and Conclusions of Law, and being fully advised;

Wherefore, by reason of the law and the Findings of Fact, as aforesaid,

It Is Ordered, Adjudged and Decreed that the plaintiffs were during all of the times mentioned herein, and now are, the owners of those certain Placer Mining Claims located in Township 14 South, Range 12 East, San Bernardino Base and Meridian, and consisting of the numbers of acres, respectively, set opposite each name, to wit:

<u>Name</u>	<u>Description</u>	<u>Acreage</u>
Frigid No. 1	NW $\frac{1}{4}$ of Section 29	160
Frigid No. 2	NE $\frac{1}{4}$ of Section 29	160
Frigid No. 3	SW $\frac{1}{4}$ of Section 29	160
Frigid No. 4	SE $\frac{1}{4}$ of Section 29	160
Temperate No. 1	NW $\frac{1}{4}$ of Section 21	160
Temperate No. 2	NE $\frac{1}{4}$ of Section 21	160
Temperate No. 3	SW $\frac{1}{4}$ of Section 21	160
Temperate No. 4	SE $\frac{1}{4}$ of Section 21	160
Tropical No. 1	NW $\frac{1}{4}$ of Section 28	160
		[63]
Tropical No. 2	NE $\frac{1}{4}$ of Section 28	160
Tropical No. 3	SW $\frac{1}{4}$ of Section 28	160
Tropical No. 4	SE $\frac{1}{4}$ of Section 28	160
Torrid No. 1	NW $\frac{1}{4}$ of Section 20	160
Torrid No. 2	NE $\frac{1}{4}$ of Section 20	160
Torrid No. 3	SW $\frac{1}{4}$ of Section 20	160
Torrid No. 4	SE $\frac{1}{4}$ of Section 20	160

and are entitled to the possession of said Mining Claims herein described; that the claims of the defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, and the claims of the cross-claimants, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, and all who claim title under them, in and to said Placer Mining Claims, are without any right whatever; that said defendants and cross-claimants have no right, title, interest, claim or estate whatsoever, in or upon said Placer Mining Claims, or any part thereof, and said defendants and cross-claimants, and all persons claiming under them, are hereby enjoined and debarred from claiming or asserting any estate, right,

title, interest in, or claim or lien upon said Placer Mining Claims, or any part thereof.

It Is Further Ordered, Adjudged and Decreed that said plaintiffs have and recover of and from said defendants and cross-claimants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker, John S. Patten, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, the costs of said plaintiffs herein expended and taxed in the sum of \$227.32.

That said real property is situate in the County of Imperial, State of California, and more particularly described as follows, to wit: Section 20, Section 21, Section 28 and Section 29, in Township 14 South, Range 12 East, San Bernardino Base and Meridian. [64]

Dated: July 2, 1947.

LEON R. YANKWICH
United States District Judge

The foregoing Decree Quieting Title is hereby approved as to form: Reynolds & Painter and William W. Kaye, by _____, Attorneys for Defendants and Cross-Claimants. Michael F. Shannon and Thomas A. Wood, by _____, Attorneys for Defendants and Cross-Defendants.

Judgment entered Jul. 11, 1947. Docketed Jul. 11, 1947. C. O. Book 44, page 182. Edmund L. Smith, Clerk; by John A. Childress, Deputy.

Judgment Satisfied 9/10 47, by flg. satis. Edmund L. Smith, Clerk U. S. District Court, Southern District of California; by Edw. F. Drew, Deputy. [65]

Received copy of the within Decree Quietting Title this 27 day of June, 1947. Michael F. Shannon, by N. Featherstone, Attorneys for Defendants. Jose et al.

Received copy of the within Decree this 27 day of June, 1947, Reynolds, Painter & Cherniss, by Louis Miller, Attorneys for Defendants.

[Endorsed]: Filed Jul. 11, 1947. Edmund L. Smith, Clerk. [66]

[Title of District Court and Cause]

NOTICE OF APPEAL [67]

Notice is hereby given that J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, defendants and cross-defendants above named, hereby appeal to the Circuit Court of Appeals, Ninth Circuit, from the final judgment entered in this action on July 11, 1947.

Dated this 27th day of August, 1947.

MICHAEL F. SHANNON

THOMAS A. WOOD

Attorneys for Appellants. J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, 1017 Citizens Natl. Bank Building, Los Angeles 13, California [68]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 27, 1947. Edmund L. Smith, Clerk. [69]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that Harris H. Hammond, A. L. [70] Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, defendants and cross-claimants above named, hereby appeal to the Circuit Court of Appeals, Ninth Circuit, from the final judgment entered in this action on July 11, 1947.

Dated this 27th day of August, 1947.

REYNOLDS & PAINTER and
W. W. KAYE

By Howard Painter

Attorneys for Appellants, Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney, and Irvin S. Barthel,

1111 Citizens Natl. Bank Building, Los Angeles 13,
California [71]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 27, 1947. Edmund L. Smith,
Clerk. [72]

[Title of District Court and Cause]

ORDER FOR TRANSMITTAL OF LEGAL PAPERS
AND EXHIBITS

Notice of Appeal from the final Judgment in this action having heretofore been filed herein,

Now, Therefore, pursuant to the provisions of Rule 75(i) of the Federal Rules of Civil Procedure,

It Is Hereby Ordered, that all original papers and exhibits introduced in evidence, or marked for identification, in [79] the above-entitled cause, be sent to the Circuit Court of Appeals, Ninth Circuit, as part of the record on appeal in said cause, in lieu of copies of such papers and exhibits.

Dated: October 2, 1947.

LEON R. YANKWICH

Judge of the United States District Court

[Endorsed]: Filed Oct. 2, 1947. Edmund L. Smith,
Clerk. [80]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 80, inclusive, contain full, true and correct copies of Complaint to Quiet Title, for Injunction and Money Damages; Answer of Defendants J. A. Jose et al.; Answer of Defendants Ella Jackman et al.; Stipulation and Order

re Party Plaintiff; Answer and Counterclaim of Defendants Harris H. Hammond et al.; Cross-Claim of Harris H. Hammond et al.; Answer to Cross-Claim of Harris H. Hammond et al.; Stipulation and Order Substituting Parties Plaintiff; Order for Judgment and Findings; Opinion; Findings of Fact and Conclusions of Law; Decree Quietting Title; Notice of Appeal of J. A. Jose et al.; Notice of Appeal of Harris H. Hammond et al.; Designation of Record on Appeal of J. A. Jose et al.; Designation of Record on Appeal of Harris H. Hammond et al.; and Order for Transmittal of Papers and Exhibits which, together with copy of Reporter's Transcript of Proceedings on June 3, 4 and 5, 1947 and Original Plaintiffs' Exhibits 1 to 51, inclusive, and Original Defendants' Exhibits A to NN, inclusive, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$19.25 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 2nd day of October, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause]

Honorable Leon R. Yankwich, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Tuesday, June 3rd, 1947

Appearances:

For the Plaintiffs: O. R. Hedges, Esquire, and Monta W. Shirley, Esquire.

For the Defendants J. A. Jose, et al: Michael F. Shannon, Esquire, and Thomas A. Wood, Esquire.

For the Defendants A. L. Bergere, et al.: William W. Kaye, Esquire, and Messrs. Reynolds & Painter, by Howard Painter, Esquire.

Los Angeles, California, Tuesday, June 3, 1947

10:00 A. M.

The Court: Call the case, Mr. Clerk.

The Clerk: Case No. 6105-Y, Civil, Hattie M. Houck, Administrator of the Estate of Stanley B. Houck, deceased, versus J. A. Jose, et al.

Mr. Hedges: The plaintiff is ready.

Mr. Painter: Defendants are ready.

Mr. Wood: We are ready.

The Court: Would you like to make an opening statement?

Mr. Hedges: I would like to, your Honor, yes.

I would first, with permission of the court, like to ask to have associated with me Mr. Monta W. Shirley as one of the plaintiffs' attorneys. Mr. Shirley is authorized to practice in the Federal court.

The Court: All right.

Mr. Hedges: This action, your Honor, is an action on behalf of the plaintiffs to quiet title to certain lands located in Imperial County, California, and for a permanent injunction and money damages.

The plaintiff will attempt to prove that on September 6th, 1945, Sections 20, 21, 28 and 29 in Township 14 South, Range 12 East, San Bernardino Meridian, Imperial County, California, were open for entry by the United States Government. [7*]

That on the 6th of September, 1945, the plaintiffs, through their agents and attorney-in-fact, caused to be filed on the lands certain mining claims. These mining claims were known as Frigid No. 1 on the Northwest Quarter of Section 29, containing 160 acres.

Frigid No. 2 on the Northeast Quarter of Section 29, containing 160 acres.

Frigid No. 4 in the Southwest Quarter of Section 24, containing 160 acres.

Frigid No. 4 in the Southeast Quarter of Section 29, containing 160 acres.

Temperate No. 1, in the Northwest Quarter of Section 21, containing 160 acres.

Temperate No. 2, in the Northeast Quarter of Section 21, containing 160 acres.

Temperate No. 3, in the Southwest Quarter of Section 21, containing 160 acres.

And Temperate No. 4, in the Southeast Quarter of Section 21, containing 160 acres.

*Page number appearing at top of page of original Reporter's Transcript.

Tropical No. 1, in the Northwest Quarter of Section 28, containing 160 acres.

Tropical No. 2, in the Northeast Quarter of Section 28, containing 160 acres.

Tropical No. 3, in the Southwest Quarter of Section 28, containing 160 acres. [8]

And Tropical No. 4, in the Southwest Quarter of Section 28, containing 160 acres.

Torrid No. 1, in the Northwest Quarter of Section 20, containing 160 acres.

Torrid No. 2, in the Northeast Quarter of Section 28, containing 160 acres.

Torrid No. 3, in the Southwest Quarter of Section 20, containing 160 acres.

And Torrid No. 4, in the Southeast Quarter of Section 20, containing 160 acres.

In other words, there are sixteen claims in all.

Subsequent to the date of the filing of these claims upon the lands that I have just described the plaintiffs through their agents and attorney-in-fact, caused the necessary development work to be done upon this property in that they moved at least seven cubic yards of material from each of the claims and expended the sum of at least \$1.00 per acre on the total acreage filed upon.

We will further attempt to prove that the lands contain in very, very valuable quantity Montmorillonite Clay and that they have expended considerable sums of money in developing the property and that they have employed chemists and other scientists to analyze the material, the mineral, that was found, for the use of food supplements and other uses in connection with poultry, cattle, and

agricultural [9] products, and that notwithstanding their right to the lawful possession of the properties to which I have referred, the defendants and each of them by threats of violence, bodily injury and so forth subsequent to the date of the filing and of the performance of development work, prohibited the plaintiffs, their agents, servants and employees from entering upon this land.

That although the plaintiffs have requested the defendants to desist from these threats they have failed and refused to do so.

I might add that in the first instance an injunction pendente lite was requested before I became associated in the case at all, and ultimately a stipulation was entered into between all of the defendants and the plaintiffs to the effect that none of the parties would enter upon the land or remove any of the material therefrom pending the final determination of this action.

We intend to prove that as a result of the things that I have just mentioned that we have suffered an irreparable loss and damage and we seek from the court a decree to quiet title to the property and for an accounting of the clay which the defendants removed from the property and a perpetual injunction.

The Court: Before you proceed further, have any of the fictitious persons been served?

Mr. Hedges: No, your Honor. We move to dismiss as to [10] them.

The Court: Doe One, Doe Two, Doe Three, Doe Four, and Doe Five.

Mr. Hedges: That is correct, your Honor. We move to dismiss as to them.

The Court: Then we are proceeding against the named defendants only?

Mr. Hedges: Yes. Now, in order that the court may be more familiar with the entire action I think it is only fair to say now, even though this is a quiet title action, that it is a little out of the ordinary from the usual type of quiet title action.

It is only fair to state that it apparently is contended by the defendants—and for the purpose of brevity I think we can refer to the two groups of defendants, one as the Jose group and one as the Hammond group, if that is satisfactory with you gentlemen. There are several defendants under each one of those groups, but if we may refer to them as those groups it will save a lot of time.

I believe it is contended by the defendants, by the defendants Jose and his group, that they originally filed on this land approximately June 26th of 1937, and that the defendants of the Hammond group and others filed on the land on September 7th, that being the same date as the plaintiffs' second filing. [11]

The plaintiff filed on the 6th of September and also on the 7th. The Hammond group filed an amended location notice on the same date—that is, they filed two location notices on the 7th of September and filed another location notice on November 10th, 1945.

The Jose group filed again a notice of intention to locate on January 14th of the year 1946, followed by an actual filing on the property on January 17th, 1946, and then re-reported their notice of location on April 12th, 1946.

So, the dispute here appears to be as to who actually filed on the property first and did the necessary improvement work as between the three classes of parties to this action.

Now, I understand your Honor is anxious that we complete the case, if at all possible, by the end of the week. I assure you as far as the plaintiffs are concerned we will do our utmost to do so. I think we can shorten the case by several stipulations here to which I think the defendants will agree.

The Court: Very well.

Mr. Hedges: Correct me if I am wrong, gentlemen. I think it can be stipulated that the plaintiffs to this action are all residents of the State of Minnesota; that the group of defendants known as the Jose group are residents of the State of California. [12]

Mr. Wood: Yes.

Mr. Hedges: That a portion of the group of the Hammond defendants are residents of the State of Colorado. The remaining group are residents of the State of California.

Mr. Painter: Yes.

Mr. Hedges: Will you so stipulate?

Mr. Painter: So stipulate.

Mr. Hedges: I think it can also be stipulated, your Honor, that the value of the mineral deposits on the land just set forth is greatly in excess of the jurisdiction of the court. In other words, it is greatly in excess of the sum of \$3,000.00. Can that be stipulated?

Mr. Painter: So stipulated.

Mr. Wood: So stipulated.

Mr. Hedges: I believe it can also be stipulated that all of the parties to this action, that is the plaintiff and both groups of defendants, filed with the district Land Office of the Department of Interior and reported with the County Recorder the usual stipulations that are required in mining matters with the United States of America.

Mr. Painter: So stipulated.

Mr. Wood: So stipulated.

Mr. Hedges: And I believe it can be further stipulated that this is Governmentally surveyed land. Is that stipulated to? [13]

Mr. Wood: Yes.

Mr. Painter: Yes, so stipulated.

Mr. Hedges: Thank you, your Honor.

The Court: All right. Does either counsel for the defendants desire to make an opening statement at this time?

Mr. Painter: If your Honor please, I would like to reserve my statement until after plaintiffs' case has been presented.

There are many phases that might not necessarily be gone into in view of the evidence which might be introduced by the plaintiff.

The Court: Very well. Call your first witness.

Mr. Hedges: Call Mr. Imler.

EUGENE H. IMLER,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Eugene H. Imler.

Direct Examination

By Mr. Hedges:

Q. Where do you reside, Mr. Imler?

A. Imperial County.

Q. Do you have a street address or postoffice address?

A. Route 2, Box 94, Imperial. [14]

Q. And what is your business, profession, or occupation? A. Registered civil engineer.

Q. How long have you been so engaged in that business? A. Since 1918—29 years.

Q. And in what locations?

A. In California practically the entire time—Los Angeles, Pasadena. I was assistant City Engineer of Pasadena and in soil work down in Imperial Valley the last ten years.

Mr. Painter: If your Honor please, we can barely hear the witness.

The Witness: I will speak louder.

Q. By Mr. Hedges: And will you tell us just briefly what your business consists of as a registered engineer and what you do in that position in Imperial County?

A. Making surveys, property surveys, studying soil conditions for irrigation purposes; studying the development of crops in the Imperial Valley.

Q. I will show you a map which I have previously shown to both counsel for the defendants, and ask you

(Testimony of Eugene H. Imler)

whether or not you prepared this map or whether or not it was prepared under your supervision and direction.

A. Yes. I prepared the map. I was on the field with my crew and I put my affidavit of the State of California [15] signifying it a correct survey and truly represents things I found on the ground.

Mr. Hedges: May this be marked Plaintiffs' first exhibit for identification?

The Court: Yes.

Mr. Painter: I am sorry to bring this up again, but we cannot hear the witness over here at all.

The Court: Will you speak up, please?

The Witness: All right.

The Clerk: Plaintiffs' Exhibit 1 for identification.

(The document referred to was marked as Plaintiffs' Exhibit 1, for identification.)

Mr. Hedges: I would like to put it on the board, if I may, your Honor.

The Court: Very well.

Q. By Mr. Hedges: Now, will you tell us, Mr. Imler, what dates you made this survey map?

A. The date is on the map. It is May 31st.

Q. 1947? A. Correct.

Q. And how long prior to that date did you go on the property, if you did, for the purpose of accumulating the material which you have on the map?

A. Originally I had a crew in September—I guess it was August 1945. [16]

Q. You went upon each of these four sections in August of 1945?

A. Either August or the first part of September—just prior to the filing of the claims.

(Testimony of Eugene H. Imler)

Q. And just what did your work and the work of your crew you had at that time consist of? [17]

A. Locating the Government section corners in order to place the notices on the proper quarter corners.

Q. Will you show us on this map just where the Governmental metal stakes are located?

A. The northwest quarter of section 20, the north one-quarter corner of section 20, the northeast corner of section 20 and also the northwest corner of section 21.

The north quarter corner of section 21. The northeast corner of section 21. The east quarter corner of section 21. The southeast corner of section 21. The south, which is also the northeast corner of section 28. The quarter corner between sections 21 and 28. The section corner between sections 20, 21, 29 and 28. The quarter corners between sections 21 and 20. The quarter corner between sections 20 and 29. The section corner common to sections 20 and 29. The quarter corner between sections 20 and 19. The quarter corner between sections 29 and 30. Also the southwest corner of section 29.

The quarter corner between sections 29 and 32. The common corner of sections 28, 29, 32 and 33.

The quarter corner between sections 28 and 33. The southeast corner of section 28. The east quarter corner of section 28. They are the general land office pipes.

Q. And from those pipes—from those pipe locations you arrived at your figures for the various locations, mining [18] locations which you have marked on the map, is that correct?

A. In 1945 we wanted to make sure that each pit was dug in its proper corner and the pits were dug as shown here. And this year, in May, 30 and 31, we tied those in

(Testimony of Eugene H. Imler)

to the section corners to get the true distance away from the quarter corners.

Also at the same time we took the measurements of the pit and the yardage that had been removed.

Q. In other words, if I understand you correctly, in September of 1945 when you first went upon the property for the purpose of surveying the claims, the development work had not been done? A. That is correct.

Q. And did you at that time stake out various locations for development work?

A. We located the different section corners and placed where the pit should be dug so they would fall within the proper quarter corners.

Q. And at whose request did you do this work in 1945?

A. At the request of Mr. Louis.

Q. And whose request did you do it in 1946?

A. By the same parties.

Q. All right. Now, starting with the claim known as Torrid No. 1. Will you explain to us the location that you have marked thereon and how you arrived at it? [19]

A. Having the different corners located we were able to turn an angle from the section lines to the pit corner. Also getting the angle of the pit in relationship to the other lines of the survey and measuring the dimensions of the pit as I mentioned, the outside dimensions and also the depth, in order to figure the yardage.

Q. Did you find in 1946 that that was the same location that you had staked in 1945? A. Correct.

Q. Now, will you tell us—can you tell us from the map just what the location is?

A. For Torrid No. 1 it is a distance of 131 feet in a southeasterly direction from the northwest corner of section 20.

(Testimony of Eugene H. Imler)

Q. Can you tell us how big the pit is—that is in size?

A. The outside dimensions are 25 by 25 and the depth varies—I have calculation sheets, the depth varied from two to five feet all through the property.

Q. Now, did you make an estimate of the number of yards that had been removed from this pit?

A. I calculated it—it is not estimated but calculated.

Q. Will you tell us how you calculated it?

A. By taking the dimensions of the pit, also the [20] elevations of the natural ground surface which still shows and the bottom of the pit where the digging had ceased.

Q. How much yardage did you determine by this method had been removed from the claim location known as Torrid No. 1? A. 46 cubic yards.

Q. Now, let us take Torrid No. 2. Will you tell us—I assume you arrived at that location in the same manner as you arrived at it in Torrid No. 1.

A. Practically.

Q. Will you tell us what the dimensions are or, strike that. What the location is of that claim?

A. It is located in the northeast one-quarter of section 20.

Q. And how far from the boundary lines?

A. 135 feet in a northwesterly direction from the quarter corner between 20 and 21.

Q. And did you determine the size of that pit?

A. I did.

Q. Will you tell us what that was?

A. 29 by 30 outside dimensions, containing 113 cubic yards of excavated material.

Q. Did you estimate or calculate approximately how deep this pit was? A. I did. [21]

(Testimony of Eugene H. Imler)

Q. How deep was it?

A. I would have to go to my notes.

Q. Do you have your field notes with you?

A. I do.

Q. Is that to which you are now referring?

A. That is correct. It is field notes for Torrid No. 2. Here it is. The depth averaged—it varies but it averaged three and eight tenths feet. That was irregular digging. Practically the same depth all around in the pit. Some of it varied a little bit and we had to calculate the yardage by a little more difficult method.

Q. I believe you said you calculated the yardage at 113 cubic yards? A. Correct.

Q. All right. Now, on to Torrid No. 3. Will you give us the location of that pit?

A. That is located in the southwest one-quarter of section 20, 72 feet in a northeasterly direction from the southwest corner of section 20.

Q. And what is the size of that pit?

A. That pit is 20 by 33 feet.

Q. And did you calculate or get an average depth of that pit?

A. I did. These are not in the order you are asking me because we went around—here it is. Torrid No. 3. [22] The average depth in that pit is 2 and 7/10 feet.

Q. And did you calculate the number of yards of material removed from that pit?

A. I did and found it to be 80.6. All these yardage figures are on this map that is submitted in evidence.

(Testimony of Eugene H. Imler)

Q. Now on Torrid No. 4 will you tell us the location of the pit on that claim?

A. It is in the southeast one-quarter of section 20. The pit is located 69 feet in a northwesterly direction from the southeast corner of section 20.

Q. And what is the size of the pit?

A. The size is 21 by 18.

Q. And did you calculate the yardage?

A. 32.5 cubic yards.

Q. Now, Temperate No. 1. Will you give us the location of the pit on that claim?

A. It is in the northwest one-quarter of section 21. The pit is located 45 feet in a northeasterly direction from the west one-quarter corner of section 21.

Q. And what is the size of that pit?

A. The size of that pit is—

Mr. Wood: We might expedite this by having him read it off of the map. He put it on there.

Mr. Painter: No objection as far as we are concerned.

Q. By Mr. Hedges: All right. He inadvertently [23] neglected to put that one on the map. He has to refer to his field notes.

Q. By Mr. Hedges: Just mark it right on the map if you will.

The Witness: 27 feet by 27 feet outside dimensions.

Q. And do you have the average depth of that pit?

A. The average of that pit is 2.4 feet.

Q. 2.4 feet. A. Correct.

Q. And did you calculate the number of yards of material removed from that location?

A. 70.9 cubic yards.

(Testimony of Eugene H. Imler)

Q. Now, moving to Temperate No. 2. Will you give us the location of that. You can read it from the figures right off of there, if you will.

A. That is in the northeast one-quarter of section 21, located 101 feet in a northwesterly direction from the quarter corner between 21 and 22.

Q. And the size of it?

A. The size of the pit is 25 by 24 and contained just an even 100 cubic yards.

Q. All right. Now, Temperate No. 3. I notice you have two locations on that claim.

A. Both pits are located in the southwest one-quarter of section 21 and the one pit is located 51 feet in a [24] northeasterly direction. The other pit 128 feet in a northeasterly direction from the southwest one-quarter—southwest corner of section 21.

Q. Let us mark those pits 1 and 2 so we can distinguish between them.

A. They are marked 1 and 2. The first one I read was pit No. 2 and the second one was pit No. 1.

Q. What is the dimension of pit No. 2?

A. 15 by 17 and pit No. 1 is 17 by 21. Pit No. 2 has 47.2 cubic yards and pit No. 1 53 cubic yards.

Q. When you say it has "cubic yards" you mean that is the number of yards removed from the pit?

A. Removed from the pit, yes, sir.

Q. Now, on Temperate No. 4.

A. There are two pits.

Q. I notice there are two pits there also.

A. They are in the southeast quarter of section 21. No. 1 is located 129 feet in a northwesterly direction and No. 2 is located 188 feet in a northwesterly direction from the southeast corner of section 21. The dimensions of pit

(Testimony of Eugene H. Imler)

No. 1 is 26 feet by 27 feet and cubic yards 80, and the dimensions of No. 2 is 24 by 26 feet and the cubic yardage is 86.6.

Q. Now, we move down to the claim known as Frigid No. 1. Give us the same information, reading it from the map on that. [25]

A. Frigid No. 1 is located in the northwest one-quarter of section 21. The pit is located 129 feet in a southeasterly direction from the northwest corner of section 29. Its dimensions are 27 by 27. It contained 125.5 cubic yards of excavation.

Q. Now, as to Frigid No. 2.

A. Located in the northeast one-quarter of section 29. The pit is located 97 feet in a southwesterly direction from the northeast corner of section 29. Its dimensions are 22 by 23 and it had an excavation of 93.7 cubic yards.

Q. Frigid No. 3?

A. Located in the southwest one-quarter of section 29. It is located 129 feet in a southeasterly direction from the west one-quarter corner of section 29. The dimensions are 23 by 25 and it contained 138.4 cubic yards of excavation.

Q. Frigid No. 4?

A. Located in the southwest one-quarter of section 29. Its location is 107 feet in a southwesterly direction from the quarter corner between 28 and 29. It was 26 by 26 feet in dimension and contained 100 cubic yards.

Q. Now, Tropical No. 1. There are two locations there I notice.

A. Both are located in the northwest one-quarter of section 28. No. 1 is a distance of 110 feet in a south-

(Testimony of Eugene H. Imler)

easterly direction. No. 2 is 187 feet in a southeasterly [26] direction. No. 1 is 16 by 31 feet containing 74 cubic yards. No. 2 is 19 by 22 and contains 47.1 cubic yards.

Q. Tropical No. 2?

A. Tropical No. 2 is in the northeast one-quarter of section 28. The pit is located 135 feet in a southwesterly direction from the northeast corner of section 28. Its dimensions are 25 by 26 and contained 33.7 cubic yards.

Q. Tropical No. 3?

A. It is in the southwest one-quarter of section 28, located 105 feet in a southeasterly direction from the quarter corner between 28 and 29. Its dimensions are 22 by 23 and it contained 63.7 yards of excavated material.

Q. Now, Tropical No. 4?

A. Tropical No. 4 is located in the southeast one-quarter of section 28. Its location is 77 feet in a southwesterly direction from the east one-quarter corner of section 28. The outside dimensions are 25 by 25 and it had 50.2 yards of excavated material.

Q. Thank you. You may resume the stand.

I believe you testified that you made the map?

A. I did—that is under my supervision.

Q. And it is a true representation of what you found on the property from your own personal examination and your field notes. Is that correct?

A. That is correct. [27]

Mr. Hedges: We offer the map in evidence as Plaintiff's Exhibit 1, your Honor.

The Court: It may be admitted.

(Testimony of Eugene H. Imler)

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The document referred to was thereupon marked Plaintiff's Exhibit 1 and admitted in evidence.)

Mr. Hedges: You may cross examine.

Mr. Painter: No cross examination as far as the defendant Hammond is concerned.

Mr. Wood: No examination.

Mr. Hedges: You may step down.

The Court: Call your next witness.

Mr. Hedges: Call Mr. Lewis.

HAROLD W. LEWIS,

called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Harold W. Lewis.

Direct Examination

By Mr. Hedges:

Q. What is your address, Mr. Lewis?

A. Office or home?

Q. Both. [28]

A. Office is 606 Paramount Building and my home is 141 South Camden Drive, Beverly Hills.

Q. What is your business or profession?

A. I am with the Mineral Industries Corporation at the present time.

Q. I show you a document entitled "Acceptance of Stipulations, Reservations and Power of Attorney" which I have previously shown to counsel, and ask you whether or not you have seen that instrument before?

A. Yes, I have.

(Testimony of Harold W. Lewis)

Q. And was that handed to you by anyone?

A. By Mr. Houck.

Q. You refer to Mr. Stanley B. Houck, one of the plaintiffs in this action? A. I do.

Q. And what did you do with the instrument after it was handed to you? A. I filed it at El Centro.

Q. With the county recorder's office?

A. County recorder, yes.

Mr. Hedges: We offer this in evidence, if your Honor please, as Plaintiff's Exhibit 2.

The Court: It will be received.

(The document referred was thereupon marked Plaintiff's Exhibit No. 2 and received in evidence.) [29]

[PLAINTIFFS' EXHIBIT NO. 2]

ACCEPTANCE OF STIPULATIONS, RESERVATIONS AND POWER OF ATTORNEY

Know All Men By These Presents: That the undersigned of the County of Hennepin, State of Minnesota, jointly and severally, do by these presents make, constitute and appoint H. W. Lewis, of the County of Los Angeles, State of California, the true and lawful attorney in fact for them and each of them and in the name, place and stead of them and each of them to do all of the acts and things appropriate and necessary to the location of placer mineral claims in Sections 20, 21, 28 and 29, Township 14, South, Range 12 East, S.B.M., Imperial County, California, under and pursuant to the conditions, stipulations and regulations hereinafter stated and the provisions of the laws of the United States and of the State of

(Plaintiffs' Exhibit No. 2)

California and the performance of the required discovery work on and for said claims and the doing of any and all other acts and things in connection therewith which are appropriate under or required by the laws of the United States or the State of California and they and each of them hereby undertake and agree that each and all of the said claims which may be located, improved and developed by them or patented to them shall be at all times and in all respects subject to the following stipulations and to the regulations contained in Section 185.36 of Title 43 of the Code of Federal Regulations (Circular No. 1275, June 22, 1932, 53 I. D. 706) and that as locator or locators (hereinafter called Locator), of each of said claims they and each of them acknowledge, accept, agree and undertake that:

In carrying on the mining and/or milling operations contemplated hereunder locator will, by means of substantial dikes or other adequate structures, confine all tailings, debris and harmful chemicals in such a manner that the same shall not be carried beyond the herein described lands by storm waters or otherwise.

There is reserved to the United States, its successors and assigns the prior right to use any of the lands herein described to construct, operate, and maintain dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, and appurtenant irrigation structures, without any payment made by the United States or its successors for such right, and the Locator agrees that if the construction of any or all of such dams, dikes, reservoirs, canals,

(Plaintiffs' Exhibit No. 2)

wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands should be made more expensive by reason of the existence of improvements or workings of the Locator thereon, such additional expense is to be estimated by the Secretary of the Interior, whose estimate is to be final and binding upon the Locator and that within thirty days after demand is made upon the Locator for payment of any such sums, the Locator will make payment thereof to the United States or its successors constructing such dams, dikes, reservoirs, canals, wasteways, laterals, ditches, telephone and telegraph lines, electric transmission lines, roadways, or appurtenant irrigation structures across, over, or upon said lands. The Locator further agrees that the United States, its officers, agents, and employees and its successors and assigns shall not be held liable for any damage to the improvements or workings of the Locator resulting from the construction, operation, and maintenance of any of the works hereinabove enumerated. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the Locator. These stipulations shall be binding upon each of the undersigned as the Locator and his heirs, successors, and assigns.

hereby granting unto said attorney in fact, full power and authority to do everything and to perform and execute any and all other acts and things and to make, sign, execute, acknowledge, deliver and enter into any and all agree-

(Plaintiffs' Exhibit No. 2)

ments and instruments in writing necessary and incident to the performance and execution of the powers herein expressly granted with full power of substitution, delegation and revocation, and do hereby ratify and confirm all acts of said attorney in fact, which he or those appointed or delegated by him shall do legally in the performance and execution hereof.

In Witness Whereof, we have hereunto set our hands and seals this 30th day of August, 1945.

Ruby E. Edling	Minnie N. McKenzie
Ruby E. Edling	Minnie N. McKenzie
Wilna M. Sherard	Edward H. McKenzie
Wilna M. Sherard	Edward H. McKenzie
Hattie M. Houck	Stanley B. Houck
Hattie M. Houck	Stanley B. Houck
Ruth M. Hebbard	Veronica K. Ghostley
Ruth M. Hebbard	Veronica K. Ghostley

In the presence of:

Willard C. Lindsay
Ellis L. Bursell

State of Minnesota)
) SS

County of Hennepin)

On this 30th day of August, 1945, before me personally appeared Ruby E. Edling, Wilna M. Sherard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Edward H. McKenzie, Stanley B. Houck and Veronica K. Ghostley, each of whom is known to me to be one of the persons described in and who executed the foregoing in-

(Plaintiffs' Exhibit No. 2)

strument, and each of whom acknowledged that he or she executed the same as his or her free act and deed.

(Seal)

Willard C. Lindsay

WILLARD C. LINDSAY

Notary Public, Hennepin County, Minn.

My Commission Expires Oct. 12, 1949.

Stanley B. Houck
1360 Northwestern Bank Bldg.
Minneapolis, Minn.

Recorded Sep 5 - 1945 4:55 PM in Book 624 Page
201 Official Records Imperial County Calif.

At Request of

Grantee..... Grantor..... Trustee.....
Mortgagee..... Mortgagor.....
H. W. Lewis
Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield County Recorder By Vera Rogers Deputy

I certify that I have correctly transcribed this document in above mentioned book. Julia M. Henderson Copyist

\$2.30 Indexed Compared Book & Paged

Case No. 6105-Y Civ. Hattie M. Houck et al. vs.
J. A. Jose. Plfs. Exhibit 2. Date Jun. 3, 1947. No. 2
in Evidence. Clerk, U. S. District Court, Sou. Dist. of
Calif. John A. Childress, Deputy Clerk.

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you another instrument, which I have previously showed to counsel, entitled "Acceptance of Stipulations, Reservations and Power of Attorney" and ask you if you have ever seen that before?

A. I have, yes.

Q. And was that handed to you by someone?

A. By Mr. Stanley B. Houck.

Q. One of the plaintiffs in this action?

A. One of the plaintiffs.

Q. And I refer to page 2 of the instrument, at the bottom, where there appears to be in handwriting the wording: "I hereby delegate, substitute and appoint Wayne H. Hodgson for me and in my name and place and stead to execute and perform all of the powers conferred upon me by the foregoing instrument, dated September 6, 1945, and purporting to be signed H. W. Lewis, and purporting to be witnessed by the signatures of W. W. Bradshaw and V. G. Fulmer. Do you know whose handwriting that is?

A. That is my signature.

Q. The handwriting?

A. The handwriting is Mr. Houck's.

Q. Was that made in your presence?

A. I cannot say because I had been overcome by the heat.

Q. When was it placed on this document, if you know? [30]

A. It was on it the 6th of September.

Q. And you are familiar with the handwriting of Mr. Houck? A. Yes, sir.

Q. Or were before his death? A. Yes, sir.

Mr. Painter: I offer this as Plaintiff's Exhibit 3 for identification.

(Testimony of Harold W. Lewis)

The Court: It will be so marked.

The Clerk: Plaintiff's Exhibit 3 for identification.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 3 for identification.)

Q. By Mr. Hedges: I show you another instrument, which I have previously shown counsel, entitled "Acceptance of Stipulations, Reservation and Power of Attorney" and ask you if you have ever seen that document before?

A. I have.

Q. And was it handed to you by someone?

A. Mr. Houck.

Q. Down at the bottom of page 2 in handwriting appears the wording: "I hereby delegate, substitute and appoint W. W. Bradshaw for me and in my name, place and stead to exercise and perform all of the powers conferred upon me by the foregoing instrument, in the presence of" and purporting to be the signature of Stanley B. Houck and a [31] signature purporting to be that of H. W. Lewis and dated September 6, 1945. I will ask you in whose handwriting the wording is.

A. That is Mr. Houck's writing.

Q. That is your signature at the bottom?

A. That is right.

Q. And that is the signature of Stanley B. Houck?

A. Yes, it is.

Mr. Hedges: I offer this as Plaintiff's next exhibit for identification.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 4 for identification.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you another instrument, which I have previously shown to counsel, entitled "Acceptance of Stipulations, Reservations and Power of Attorney," and ask you if you have ever seen that instrument before? A. Yes, I have.

Q. And by whom was that handed to you?

A. That was handed to me by Mr. Houck.

Q. On the second page of this instrument appears the wording: "I hereby delegate, substitute and appoint Howard H. Hough for me and in my name, place and stead to execute and perform all of the powers conferred upon me by the foregoing instrument, dated September 6, 1945, in the presence of" and purporting to be the signatures of W. W. Bradshaw and [32] V. G. Fulmer and signed by the signature purporting to be that of H. W. Lewis. I will ask you if that is your signature?

A. That is right.

Q. And the writing to which I have just referred is the handwriting of Mr. Houck? A. Yes.

Mr. Hedges: I offer this as Plaintiffs' next in order for identification.

The Clerk: Plaintiffs' Exhibit 5 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 5 for identification.)

Q. By Mr. Hedges: Mr. Lewis, I refer now to Plaintiffs' Exhibit 1 on the blackboard and ask you if you are familiar with that property? A. Yes, I am.

Q. When did you first become familiar with it subsequent to September 6, 19— that is on September 6th or subsequent thereto?

A. By that do you mean the first time I was ever on the property?

(Testimony of Harold W. Lewis)

Q. Subsequent to, let us say, the 5th of September.

A. I first went on the property in about 1942. I was on it many times after that up to September 6, 1945.

Q. All right. Were you on the property on September [33] 6, 1945? A. I was.

Q. Was there anyone else with you at that time?

A. Mr. Stanley B. Houck and myself were there the morning of the 6th of September and there we met Mr. Wayne Hodgson, Mr. Hough, Mr. Fulmer and Mr. Bradshaw. I believe that was all early in the morning.

Later on there were some other people that came but they had no connection with the property.

Q. How did you go out to the property on that morning? A. Drove out in an automobile.

Q. This is desert, semi-arid land, is it not?

A. It is.

Q. Did you have with you at the time you went out on the 6th of September any papers or documents?

A. We had a series of mining locations.

Q. I show you a document entitled "notice of location, placer claim," dated September 6, 1945 and ask you if you have ever seen this document before?

A. Yes.

Q. When did you first see it?

A. Those were made up in our office probably a week before we went down, other than the signatures.

Q. Just for the purpose of the record, each of these documents I have previously shown to counsel for the defendants [34] ants—I beg your pardon. What did you say?

A. I said the typewritten part was made up in the office maybe a week or 10 days before we went down, for this filing to be prepared.

(Testimony of Harold W. Lewis)

Q. You mean before you went down to the property?

A. Yes.

Q. Designated? A. Yes, on September 6.

Q. On the map? A. Yes, September 6.

Q. And at the bottom of the page, the first page of this notice appears a signature. Is that your signature—that is a series of signatures, H. W. Lewis. Are those your signatures? A. They are.

Q. And when did you affix your signatures to these instruments?

A. On the morning of the 6th of September.

Q. On the reverse side of the instrument also appears what purports to be the signature of H. W. Lewis, signing the instrument as attorney in fact for each of the parties named—Stanley B. Houck, Ruby E. Edling, Wilna M. Sherard, Hattie M. Houck, Ruth M. Hebbard, Minnie N. McKenzie, Edward H. McKenzie and Veronica K. Ghostley. Is that your signature?

A. The "H. W. Lewis" is my signature. [35]

Q. And you signed it? A. That is right.

Q. For the others? A. That is right, yes.

Mr. Painter: Just one second. I am going to ask the last statement of the witness: "I signed for them as attorney in fact" be stricken on the ground there is no foundation laid and it is a conclusion and opinion of the witness.

The Court: Oh, I don't think so.

Mr. Hedges: The power of attorney is in evidence.

The Court: Objection is overruled.

Q. By Mr. Hedges: I now show you another document—

The Clerk: Is that to be marked?

(Testimony of Harold W. Lewis)

Mr. Hedges: Yes. I think we had better mark them.

Q. By Mr. Hedges: Did you cause this instrument to be recorded? A. I did.

Mr. Painter: Pardon me.

Mr. Wood: Are these being offered in evidence or for identification?

Mr. Hedges: I haven't made any offer of either yet.

Mr. Wood: Oh, I am sorry.

Q. By Mr. Hedges: Did you cause the instrument to be recorded in the county recorder's office of Imperial County? [36] A. I did.

Q. And on what date?

A. That one is on December 4, 1945.

Mr. Hedges: We offer this in evidence as plaintiffs' next in order.

Mr. Wood: To which we object on the ground no proper foundation has been laid.

The Court: Let me see it. The objection is overruled.

Mr. Painter: We have a further objection, if your Honor please. Mr. Wood had not finished his objection. I wanted to join in those objections and add to them if he didn't cover all of the objections. Will your Honor reserve your ruling until we finish that?

The Court: Yes, go ahead.

Mr. Wood: I want to object on the ground it is incompetent, irrelevant and immaterial and no showing, if your Honor please, that the power of attorney—no proper showing of proof of power of attorney and no showing the so-called parties whom he represented ever accepted his acts.

Mr. Painter: I want to join in those objections and add the further objection, if your Honor please, that it is

(Testimony of Harold W. Lewis)

a self-serving declaration for the statements in which there has been no foundation laid.

I would like to point out to the court that there is no evidence before the court that this instrument would have [37] been effective for the purpose recited therein on the date which it bears. In other words, the contention or evidence that these lands were open for entry on the 6th of September, 1945 has not been placed before your Honor in evidence.

The Court: That is a question to be determined from all the evidence. This merely shows a document which is recorded, a notice of location. What effect will be given to it will be determined later on. The objections are overruled. It may be received.

(The document referred to was marked Plaintiffs' Exhibit No. 6 and received in evidence.)

[PLAINTIFFS' EXHIBIT NO. 6]

NOTICE OF LOCATION

Placer Claim

Notice Is Hereby Given: That the undersigned citizens of the United States, over the age of twenty-one years, in compliance with the requirements of Chapter VI, Title 32, of the revised Statutes of the United States and the local customs, laws and regulations, have this day located and claim the following described Placer Mining grounds, viz:

Northeast Quarter (NE $\frac{1}{4}$) of Section 28, Township 14 South, Range 12 East; S. B. B. & M. together with all water and timber appurtenant, allowed by law, are hereby claimed.

(Plaintiffs' Exhibit No. 6)

This Claim consisting of 160 acres, or ----- number of feet claimed, shall be known as the Tropical No. 2 District, County of Imperial, State of California, Section 28, Township 14 South, Range 12 East, Meridian S. B. B. & M.

This Claim to be identified by its proximity to the following natural object or permanent monument, to-wit: Surveyed land

Located this day of Sep 6 1945.

The date of the discovery and posting of this notice is the day of Sep 6 1945.

Locators:

Stanley B. Houck	Ruth M. Hebbard
By H. W. Lewis	By H. W. Lewis
Ruby E. Edling	Minnie N. McKenzie
By H. W. Lewis	By H. W. Lewis
Wilna M. Sherard	Edward H. McKenzie
By H. W. Lewis	By H. W. Lewis
Hattie M. Houck	Veronica K. Ghostley 12:10 P.M.
By H. W. Lewis	By H. W. Lewis Sept 6-1945

Witnesses

Howard H. Hough	Wayne H. Hodgson
12:11 P.M. Sept 6, 1945	12:13 P.M. Sept 6, 1945

The exterior boundaries of a Placer Claim cannot be limited by any local mining regulation to less than 25x1500 feet, measuring from the center of vein on either side.

Pub. Res. Code 2313, within ninety days after the posting of this notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim

(Plaintiffs' Exhibit No. 6)

or location, the locator shall record a true copy of the notice together with a statement of the markings of the boundaries as required in this chapter, and of the performance of the required discovery work, in the office of the county Recorder of the County in which such claim is situated.

STATEMENT OF THE MARKINGS OF THE BOUNDARIES

The markings of the boundaries of the aforesaid Claim as required by Section 2303 Public Resources Code, are designated and described as:

N.E. $\frac{1}{4}$ Sec 28 T 14 S R. 12 E S.B.B.M. Tropical #2.

STATEMENT OF DISCOVERY WORK PERFORMED

The locator has performed discovery work as required by Section 2304, Public Resources Code, as follows:

More than 10 cubic yards of material has been mined and moved

More than One Hundred Sixty Dollars has been spent in development work

Stanley B. Houck	Ruth M. Hebbard
Ruby E. Edling	Minnie N. McKenzie
Wilna M. Sherard	Edward H. McKenzie
Hattie M. Houck	Veronica K. Gostley
Locators	

By H. W. Lewis—Their attorney in fact for each of them
Order No. 72

When recorded, please mail this instrument to.....

(Plaintiffs' Exhibit No. 6)

Recorded Dec 4 1945 4:15 P.M. in Book 624, Page 270 Official Records Imperial County, Calif.

At Request of

Grantee..... Grantor..... Trustee.....

Mortgagee..... Mortgagor.....

H. W. Lewis

Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield, County Recorder By Evalyn
B. Westerfield Deputy

I certify that I have correctly transcribed this document
in above mentioned book. Bérénice R. Moden Copyist.

\$1.00 Indexed Compared Book & Paged

Case No. 6105-Y Civ. Hattie M. Houck, et al. vs.
J. A. Jose, et al. Plfs. Exhibit No. 6. Date Jun. 3, 1947.
No. 6 in Evidence. Clerk, U. S. District Court, Sou. Dist.
of Calif. John A. Childress, Deputy Clerk.

Mr. Wood: In order that we do not unnecessarily
interrupt, may the same objection be deemed to have been
made as to these?

The Court: To the notices of location?

Mr. Wood: Yes.

The Court: All right.

Q. By Mr. Hedges: I show you next a document
entitled "notice of location"—just a moment. In order
that these may be properly identified, Plaintiffs' Exhibit
No. 6 refers to the northeast quarter of section 28. Is
that correct? A. That is.

Mr. Wood: Would you give it to us by claim name?

Mr. Hedges: Yes. The claim name is Tropical No.
2. [38]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: Now, I show you a document purporting to be a notice of location affecting the south-east quarter of section 21, the claim being known as Temperate No. 4, and ask you if you have ever seen that instrument before? A. I have.

Q. The signatures appearing thereon as locaters by yourself, is that your signature? A. That is.

Q. And when did you sign that instrument?

A. The morning of the 6th of September.

Q. 19— A. 45.

Q. And the signature on the back of the instrument purporting to sign as attorney in fact for each of the plaintiffs in this action, is that your signature?

A. That is.

Q. H. W. Lewis? A. That is.

Mr. Hedges: I offer this as Plaintiff's exhibit next in order.

The Clerk: It will be received.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 7 and received in evidence.)

The Clerk: Received in evidence subject to the objections made. [39]

Q. By Mr. Hedges: I now hand you an instrument purporting to be a notice of location affecting the north-west quarter of section 28—incidentally all of these are in township 14 south, range 12 east, S.B.B. & M. This claim purports—this claim is known as Tropical No. 1, is that correct? A. That is.

Q. And the signature appearing thereon, is that your signature? A. It is.

Q. Series of signatures? A. It is.

(Testimony of Harold W. Lewis)

Q. And when did you sign your name to this document? A. The morning of September 6th.

Q. 19— A. 45.

Q. And the signature appearing on the reverse side of the instrument, H. W. Lewis, "their attorney in fact for each of them," that is for each of the plaintiffs, is that your signature? A. It is.

Mr. Hedges: And the former exhibit, is that 7, Mr. Clerk? — The Clerk: Yes.

Q. By Mr. Hedges: No. 7 as well as this instrument, [40] were they both recorded on the same day?

A. They were.

Q. December 4, 1945? A. They were.

Mr. Hedges: Offer this as Plaintiff's exhibit next in order in evidence.

The Court: It may be received.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 8 and received in evidence.)

Q. By Mr. Hedges: I now show you an instrument purporting to be a notice of location affecting the northeast quarter of section 29, known as Frigid No. 2 and ask you whether or not the signature H. W. Lewis appearing on that instrument—the signatures appearing there are your signatures? A. They are.

Q. And when did you sign or affix your name or your signatures to this instrument?

A. The morning of September 6, 1945.

Q. I refer to the reverse side of the instrument where the signature H. W. Lewis appears and I will ask you whether or not that is your signature? A. It is.

(Testimony of Harold W. Lewis)

Q. And when was that—strike that. Did you cause this instrument to be recorded in the recorder's office [41] of Imperial County? A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as Plaintiffs' next in order.
The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 9 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 9 and received in evidence.)

Q. By Mr. Hedges: I show you an instrument purporting to be a notice of locations affecting the southeast quarter of section 20, claim being known as Torrid No. 4, and ask you whether the signatures appearing on the bottom of the instrument, H. W. Lewis, are your signatures? A. They are.

Q. When did you affix your signatures to the instrument? A. The morning of September 6, 1945.

Q. And referring to the reverse side of the instrument where your name appears as attorney in fact I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in the office of the county recorder of Imperial County?

A. I did. [42]

Q. On what date? A. December 4, 1945.

Mr. Hedges: I ask this be marked plaintiffs' exhibit next in order.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 10 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 10 and received in evidence.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you another instrument purporting to be a notice of location affecting the southwest quarter of section 21, the claim being known as Temperate No. 3, and ask you whether the signatures at the bottom of the page, H. W. Lewis, are your signatures?

A. They are.

Q. And when did you sign the instrument?

A. The morning of the 6th of September, 1945.

Q. I refer to the reverse side of the instrument where it purports to be the signature H. W. Lewis, and ask you whether or not that is your signature? A. That is.

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945. [43]

Mr. Hedges: I offer this as plaintiffs' next in order.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 11 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 11 and received in evidence.)

Q. By Mr. Hedges: I now show you an instrument purporting to be a notice of location affecting the southwest quarter of section 20, the claim being known as Torrid No. 3, and ask you whether or not the signatures appearing at the bottom of the document are your signatures? A. They are.

Q. And when did you so sign the instrument?

A. The morning of September 6, 1945.

Q. Referring to the signature of H. W. Lewis on the reverse side of the instrument, I will ask you whether or not that is your signature? A. Yes, sir, it is.

(Testimony of Harold W. Lewis)

Q. And did you cause this instrument to be recorded in the county recorder's office of Imperial County and if so on what date?

A. December 4, 1945 I recorded it.

Mr. Hedges: I offer this as plaintiffs' next in order.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 12 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 12 and received in evidence.) [44]

Q. By Mr. Hedges: I show you another instrument purporting to be a notice of location affecting the northwest quarter of section 29, the claim being known as Frigid No. 1, and ask you whether or not the signatures appearing at the bottom of that instrument are your signatures? A. They are.

Q. And if so when were they made?

A. The morning of September 6, 1945.

Q. Referring to the back side of the instrument where the signature H. W. Lewis appears, I will ask you whether or not that is your signature? A. It is.

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. What date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 13 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 13 and received in evidence.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you a document purporting to be a notice of location affecting the northwest quarter of section 20 on the claim known as Torrid No. 1, and ask you [45] whether or not the signatures appearing on the bottom of that instrument are your signatures?

A. They are.

Q. And when did you so sign the instrument?

A. The morning of September 6, 1945.

Q. I show you the reverse side of the instrument where the signature H. W. Lewis appears, and ask you whether or not that is your signature? A. It is.

Q. And did you cause this instrument to be recorded in the county clerk's office—the county recorder's office of Imperial County and if so on what date?

A. December 4, 1945 I recorded it.

Mr. Hedges: I offer this as plaintiffs' next in order.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 14 in evidence.

(The document referred to was thereupon marked Plaintiffs Exhibit 14 and received in evidence.)

Q. By Mr. Hedges: I show you what purports to be a notice of location affecting the northwest quarter of section 21, the claim known as Temperate No. 1—I have the wrong one here. Strike out the last question.

I show you an instrument purporting to be a notice of locations affecting the northwest quarter of section 21, claim known as Temperate No. 1, and ask you whether or not [46] you have ever seen that instrument before?

A. I have.

Q. And referring to the reverse side of said instrument are the signatures of H. W. Lewis—I will ask you whether or not that is your signature? A. It is.

(Testimony of Harold W. Lewis)

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did on December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order, for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 15 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 15 for identification.)

Q. By Mr. Hedges: I show you a notice of location affecting the southeast quarter of section 29, the claim known as Tropical No. 4. Have you ever seen that instrument before? A. I have.

Q. Referring to the reverse side of said instrument where the signature H. W. Lewis appears, I will ask you whether or not that is your signature? A. It is.

Q. Did you cause this instrument to be recorded in [47] the county recorder's office? A. I did.

Q. Of Imperial County? A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: All right.

The Clerk: Plaintiffs Exhibit 16 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 16 for identification.)

Q. By Mr. Hedges: I show you an instrument purporting to be a notice of location affecting the northeast quarter of section 20 on a claim known as Torrid No. 2 and ask you whether or not you have ever seen this instrument before? A. I have.

(Testimony of Harold W. Lewis)

Q. And referring to the reverse side of the instrument there appears the signature of H. W. Lewis. Is that your signature? A. That is.

Q. Did you cause this instrument to be recorded with the county recorder of Imperial County? A. I did.

Q. On what date? [48]

A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs Exhibit 17 for identification.

(The document referred to was thereupon marked Plaintiffs Exhibit No. 17 for identification.)

Q. By Mr. Hedges: I show you an instrument purporting to be a notice of location affecting the southwest quarter of section 28 on the claim known as Tropical No. 3, and ask you whether you have ever seen this instrument before? A. I have.

Q. Referring to the reverse side and to the signature H. W. Lewis, is that your signature? A. It is.

Q. Did you cause this instrument to be recorded in the office of the recorder for Imperial County?

A. I did.

Q. When? A. December 4, 1945.

Mr. Hedges: I offer this for identification.

The Court: All right.

The Clerk: Plaintiffs' Exhibit 18 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 18 for identification.) [49]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you an instrument purporting to be a notice of location affecting the southeast quarter of section 29 on the claim known as Frigid No. 4, and ask you whether or not you have ever seen that document before? A. I have.

Q. Referring to the reverse side of the document, where the signature appears, H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. And did you cause this instrument to be recorded in the office of the county recorder for Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs Exhibit 19 for identification.

(The document referred to was thereupon marked Plaintiffs Exhibit No. 19 for identification.)

Q. By Mr. Hedges: I show you what purports to be a notice of location affecting the northeast quarter of section 21 on a claim known as Temperate No. 2, and ask you whether or not you have ever seen that instrument before? A. I have. [50]

Q. Referring to the reverse side of the instrument where the signature H. W. Lewis appears, I will ask you whether or not that is your signature? A. It is.

Q. Did you cause this instrument to be recorded in the office of the county recorder of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

(Testimony of Harold W. Lewis)

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 20 for identification.

(The document referred to was thereupon marked Plaintiffs Exhibit No. 20 for identification.)

Q. By Mr. Hedges: I show you an instrument entitled notice of location affecting the southwest quarter of section 29 on a claim known as Frigid No. 3, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring to the reverse side of the instrument where the signature appears, H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. And did you cause this instrument to be recorded [51] in the office of the county recorder of Imperial County? A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Clerk: Plaintiffs' Exhibit 21 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 21 for identification.)

Q. By Mr. Hedges: I show you an instrument entitled notice of location affecting the southeast quarter of section 21 on a claim known as Temperate No. 4, dated September 7, 1945, and ask you whether or not you have ever seen that instrument? A. I have.

Q. I refer to the reverse side of the instrument where there appears the signature of H. W. Lewis and ask you whether or not that is your signature? A. It is.

(Testimony of Harold W. Lewis)

Q. And did you cause that instrument to be recorded in the county recorder's office of Imperial County?

A. Yes, sir.

Q. On what date? A. December 4, 1945. [52]

Mr. Hedges: I offer this as plaintiffs next in order for identification.

The Court: It will be so marked.

The Clerk: Plaintiffs Exhibit 22 for identification.

(The document referred to was thereupon marked Plaintiffs Exhibit No. 22 for identification.)

Q. By Mr. Hedges: I show you what purports to be a notice of location affecting the southeast quarter of section 20 on a claim known as Torrid No. 4, dated September 7, 1945, which signature is H. W. Lewis appearing at the bottom and I will ask you whether or not the signature appearing at the bottom are your signatures?

A. They are.

Q. And when did you sign the document?

A. Those were signed September 7, 1945.

Q. Referring to the reverse side of the instrument where there appears the signature H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 5, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order [53] in evidence.

Mr. Painter: If your Honor please, we want to renew our objection to the introduction in evidence of the

(Testimony of Harold W. Lewis)

instruments which counsel has now started to introduce, being dated the 7th of September, 1945 and if we may do so without re-stating our grounds that were made to the introduction to the instruments dated Sepember 6, 1945.

The Court: All right. The objection is overruled.

The Clerk: Plaintiffs' Exhibit 23 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit 23 and received in evidence.)

[PLAINTIFFS' EXHIBIT NO. 23]

NOTICE OF LOCATION

Placer Claim

Notice Is Hereby Given: That the undersigned citizens of the United States, over the age of twenty-one years, in compliance with the requirements of Chapter VI, Title 32, of the revised Statutes of the United States and the local customs, laws and regulations, have this day located and claim the following described Placer Mining grounds, viz:

Southeast quarter (SE $\frac{1}{4}$) of Section 20, Township 14 South, Range 12 East, S. B. B. & M.

together with all water and timber appurtenant, allowed by law, are hereby claimed.

This Claim consisting of 160 acres, or ----- number of feet claimed, shall be known as the Torrid No. 4 District, County of Imperial, State of California, Section 20, Township 14 South, Range 12 East, Meridian S. B. B. & M.

(Plaintiffs' Exhibit No. 23)

This Claim to be identified by its proximity to the following natural object or permanent monument, to-wit:
Surveyed land

Located This 7th day of Sept, 1945

The date of the discovery and posting of this notice
is the 7 day of Sept, 1945.

Locators:

Stanley B. Houck	Ruth M. Hebbard
By H. W. Lewis	By H. W. Lewis
Ruby E. Edling	Minnie N. McKenzie
By H. W. Lewis	By H. W. Lewis
Wilna M. Sherard	Edward H. McKenzie
By H. W. Lewis	By H. W. Lewis
Hattie M. Houck	Veronica K. Ghostley
By H. W. Lewis	By H. W. Lewis 10.01 A.M.

Witnesses

W. W. Bradshaw

The exterior boundaries of a Placer Claim cannot be limited by any local mining regulation to less than 25x1500 feet, measuring from the center of vein on either side.

Pub. Res. Code 2313, within ninety days after the posting of this notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim or location, the locator shall record a true copy of the notice together with a statement of the markings of the boundaries as required in this chapter, and of the performance of the required discovery work, in the office of the County Recorder of the County in which such claim is situated.

(Plaintiffs' Exhibit No. 23)

STATEMENT OF THE MARKINGS OF THE
BOUNDARIES

The markings of the boundaries of the aforesaid Claim as required by Section 2303 Public Resources Code, are designated and described as:

SE $\frac{1}{4}$ Sec 20 T 14 S R 12 E S. B. B. & M. Torrid
#4

STATEMENT OF DISCOVERY WORK
PERFORMED

The locator has performed discovery work as required by Section 2304, Public Resources Code, as follows:

More than 10 cubic yards of material has been mined and moved

More than One Hundred Sixty Dollars has been spent in development work

Stanley B. Houck	Ruth M. Hebbard
Ruby E. Edling	Minnie N. McKenzie
Wilma M. Houck	Edward H. McKenzie
Wilma M. Sherard	Veronica K. Gostley
Hattie M. Houck	

Locators

By H. W. Lewis—Their attorney in fact for each of them.

Order No. 10

When recorded, please mail this Instrument to
Stanley B. Houck
1360 Northwestern Bank Bldg.,
Minneapolis, Minn.

Recorded Dec 5 1945 9:30 A.M. in Book 624, Page
275 Official Records Imperial County, Calif.

(Plaintiffs' Exhibit No. 23)

At Request of

Grantee..... Grantor..... Trustee.....

Mortgagee..... Mortgagor.....

H. W. Lewis

Sheriff..... Attorney..... Locator.....

Evalyn B. Westerfield, County Recorder By Vera Rogers Deputy

I certify that I have correctly transcribed this document in above mentioned book. Jo Stevens Copyist

\$1.00 Indexed Compared Book & Paged

Case No. 6105-Y Civ. Hattie M. Houck vs. J. A. Jose et al. Plfs Exhibit 23. Dated Jun. 3, 1947. No. 23 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. John A. Childress, Deputy Clerk.

Q. By Mr. Hedges: I show you an instrument entitled notice of location affecting the northeast quarter of section 28, the claim known as Tropical No. 2, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring to the reverse side of the instrument where there appears the signature of H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. What date? A. December 4, 1945. [54]

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: All right.

The Clerk: Plaintiffs' Exhibit 24 for identification.

(Testimony of Harold W. Lewis)

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 24 for identification.)

Q. By Mr. Hedges: I now show you a document entitled notice of location affecting the southwest quarter of section 21 on a claim known as Temperate No. 3, dated September 7, 1945, and ask you whether or not the signatures, H. W. Lewis, appearing at the bottom of that document are your signatures? A. They are.

Q. When did you sign the document?

A. The morning of the 7th of September, 1945.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. You caused this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 5, 1945.

Mr. Hedges: We offer this as plaintiffs' exhibit next in order in evidence. [55]

The Court: It will be received.

The Clerk: Plaintiffs Exhibit 25 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 25 and received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 25 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 25, H. W. Lewis has signed as the party who has posted for the locators, with the hour being written in as 10:05 o'clock A. M., and Howard W. Hough and Wayne H. Hodgson have signed as witnesses to the posting of the Notice.]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: Now, I show you an instrument entitled notice of location affecting the southwest quarter of section 28 on a claim known as Tropical No. 3, dated September 7, 1945, and ask you whether or not you have ever seen that instrument before?

A. Yes, I did.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County and if so on what date? A. December 4, 1945.

Mr Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' 26 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 26 for identification.)

Q. By Mr. Hedges: Now, I show you a notice of—a [56] document entitled notice of location affecting the southeast quarter of section 29 on a claim known as Frigid No. 4, and ask you whether or not—strike that. And dated September 7, 1945, and ask you whether or not you have ever seen this instrument before?

A. I have.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. Did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

(Testimony of Harold W. Lewis)

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 27 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 27 for identification.)

Q. By Mr. Hedges: Now, I show you an instrument entitled notice of location affecting the northwest quarter of section 21 on a claim known as Temperate No. 1, dated September 7, 1945 and ask you whether or not you have ever [57] seen this instrument before?

A. I have.

Q. Referring to the reverse side of the instrument where appears the signature of H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in the county recorder's office? A. I did.

Q. Of Imperial County? A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this next in order for identification.

The Court: It will be so marked.

The Clerk: Plaintiffs' Exhibit 28 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 28 for identification.)

Q. By Mr. Hedges: I show you now what purports to be a notice of location affecting the northwest quarter of section 20 on a claim known as Torrid No.—it is the

(Testimony of Harold W. Lewis)

northeast quarter of section 20 on a claim known as Torrid No. 2, and ask you whether or not the signatures appearing at the bottom of the first page are your signatures? A. They are. [58]

Q. When did you sign the instrument?

A. The morning of September 7, 1945.

Q. And is the instrument dated September 7, 1945?

A. Dated September 7.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature? A. It is.

Q. And did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order in evidence.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 29 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 29 and received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 29 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 29, H. W. Lewis has signed as the party posting the Notice of Location, with the hour being written in as 11:01 o'clock A. M., and there are no witnesses to said posting who have signed thereon.]

Q. By Mr. Hedges: I now show you a document entitled notice of location affecting the northwest quarter of

(Testimony of Harold W. Lewis)

section 28 on a claim known as Tropical No. 2, the claim being dated September 7, 1945, and I will ask you whether or not the signature appearing at the bottom of the page—the signatures are your signatures? [59]

A. They are.

Q. When did you sign the document?

A. The morning of September 7, 1945.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. Did you cause this instrument to be recorded in the office of the county recorder of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order in evidence.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 30 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 30 and received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 30 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 30, H. W. Lewis has signed as the party posting the Notice of Location, with the hour being written in as 11:04 o'clock A. M., and there are no witnesses to said posting who have signed thereon.]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you a document entitled notice of location affecting the northeast quarter of section 29 on a claim known as Frigid No. 2, dated September 7, 1945, and ask you whether or not the signatures appearing at the bottom of the document are your signatures?

A. They are.

Q. Referring to the reverse side of the instrument [60] where the signature H. W. Lewis appears, I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order in evidence.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 31 in evidence.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 31 and received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 31 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 31, H. W. Lewis has signed as the party posting the Notice of Location, with the hour being written in as 11:05 o'clock A. M., and W. W. Bradshaw signed as witness to said posting, the hour being 11:05 o'clock A. M.]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you an instrument entitled notice of location affecting the southeast quarter of section 28, known as Tropical No. 4, dated September 7, 1945, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring to the reverse side of the instrument where it appears the signature H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in [61] the county recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4, 1945.

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Exhibit 32 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit No. 32 for identification.)

Q. By Mr. Hedges: I show you an instrument entitled notice of location affecting the northeast quarter of section 21 on a claim known as Temperate No. 2, dated September 7, 1945, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring to the reverse side of the instrument where appears the signature H. W. Lewis, I will ask you whether or not that is your signature?

A. It is.

Q. And did you cause this instrument to be recorded in the county recorder's office of Imperial County?

A. I did.

(Testimony of Harold W. Lewis)

Q. On what date? A. December 4, 1945. [62]

Mr. Hedges: I offer this as plaintiffs' next in order for identification.

The Court: It may be marked for identification.

The Clerk: Plaintiffs' Exhibit 33 for identification.

(The document referred to was thereupon marked Plaintiffs' Exhibit 33 for identification.) [62-a]

Q. By Mr. Hedges: I show you an instrument entitled Notice of Location affecting the Southwest Quarter of Section 20 on a claim known as Torrid No. 3, dated September 7th, 1945, and I will ask you whether or not you have ever seen that instrument before.

A. I have.

Q. Referring to the reverse side of the instrument where the signature appears, H. W. Lewis, is that your signature? A. It is.

Q. Did you cause this instrument to be recorded in the County Recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4th, 1945.

Mr. Hedges: I offer this as Plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 34 for identification.

(The document referred to was marked as Plaintiffs' Exhibit 34, for identification.)

Q. By Mr. Hedges: I show you now a notice of location affecting the Northwest Quarter of Section 29 on a claim known as Frigid No. 1, dated September 7th, 1945, and ask you whether or not you have ever seen that instru-[63] ment before? A. I have.

(Testimony of Harold W. Lewis)

Q. Referring to the reverse side of the instrument where the signature H. W. Lewis appears, is that your signature? A. It is.

Q. Did you cause this instrument to be recorded in the County Recorder's office of Imperial County?

A. I did.

Q. On what date? A. December 4th, 1945.

Mr. Hedges: I offer this as Plaintiffs' next in order for identification.

The Court: It may be so marked.

The Clerk: Plaintiffs' Exhibit 35 for identification.

(The document referred to was marked as Plaintiffs' Exhibit 35, for identification.)

Q. By Mr. Hedges: I show you an instrument entitled Notice of Location affecting the Northwest Quarter of Section 20 on a claim known as Torrid No. 1, dated September 7th, 1945, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring now to the reverse side of the instrument where appears the signature H. W. Lewis, is that your signature? [64] A. It is.

Q. Did you cause this instrument to be recorded in the County Recorder's office of Imperial County?

A. I did.

Q. And on what date? A. December 4th, 1945.

Mr. Hedges: I offer this as Plaintiffs' next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 36 for identification.

(The document referred to was marked Plaintiffs' Exhibit 36, for identification.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: Now, I show you an instrument entitled Notice of Location affecting the Southwest Quarter of Section 29, on a claim known as Frigid No. 3, dated September 7th, 1945, and ask you whether or not you have ever seen that instrument before? A. I have.

Q. Referring to the reverse side of the instrument where the signature H. W. Lewis appears, is that your signature? A. It is.

Q. Did you cause this instrument to be recorded in the County Recorder's office of Imperial County?

A. I did. [65]

Q. On what date? A. December 4th, 1945.

Mr. Hedges: I offer this as Plaintiffs next in order for identification.

The Court: Very well.

The Clerk: Plaintiffs' Exhibit 37 for identification.

(The document referred to was marked as Plaintiffs' Exhibit 37 for identification.)

The Court: We will take a short recess at this time.

(Short recess.)

The Court: You may proceed.

Q. By Mr. Hedges: Now, Mr. Lewis, you have previously testified that you went out to the property described in Plaintiffs' Exhibit 1, the map on the board. I believe you said that was around seven o'clock in the morning of the 6th of September, 1945?

A. We were there at seven o'clock.

Q. You were on the property at seven o'clock?

A. On the property at seven o'clock.

Q. And what did you do when you went upon the property?

(Testimony of Harold W. Lewis)

Mr. Painter: Object to that, if your Honor please, on the ground it is irrelevant and immaterial insofar as the 6th of September, 1945 is concerned.

The Court: Overruled.

Mr. Painter: It proves no issue in this case [66]

The Court: Overruled.

Q. By Mr. Hedges: Will you answer the question?

A. Well, we first drove along the main highway, that graveled road—

Mr. Wood: Will you speak up so we can hear you?

The Witness: We first traveled along the main road and met the surveying crew.

Q. By Mr. Hedges: Will you indicate on the map where the main road is? I notice it is not shown on here.

A. I can't see it from here.

Q. Come right down.

A. It is between Section 29 and 20. This is the highway between 29 and 20 and 21 and 28. It runs right along the section line.

Q. That is a dirt road through there, is that right?

A. Gravel road.

Q. Proceed.

A. We drove out there and we met Mr. Hough and Mr. Hodgson and we started locating the corners, the Government survey corners.

Q. General Land Office stakes?

A. U. S. G. S. Stakes. They are iron pipes with a bronze top, I would say about two and a half inches in diameter.

Q. The ones to which Mr. Imler referred? [67]

A. Yes.

(Testimony of Harold W. Lewis)

Q. All right. What else did you do?

A. We waited for them to locate their corners. That took several hours. I don't recall how long but it took some time. And around noon we started making our locations.

Q. All right. Now, I show you Plaintiffs' Exhibit 6 in evidence and ask you if you had that in your possession at the time to which you now refer? A. Yes.

Q. And did you have more than one of those instruments?

A. Mr. Houck had all of them in a portfolio set out in—as I recall, there were four portfolios with each section and they were divided into the smaller parts in his portfolio. I can't recall whether or not if you mean a lot of them in my hand.

Q. Did you have more than one of these instruments, Exhibit 6, in your possession at that time?

A. We had two of each one because we put one—

Q. In other words, you had two in your possession at that time? A. Yes, sir.

Mr. Painter: Mr. Hedges, will it be understood, if your Honor please, our objection goes to each and every question which relates to anything done on the 6th of September, 1945, without repeating the objections? [68]

The Court: Yes.

Mr. Hedges: I think you might state, counsel, the reason for your objection. Maybe the court would be a little more clear on it and then we would all understand it.

Mr. Painter: I believe it would be proper at this time. It is the position of the defendants and cross-complainant Hammond, et al., that the property involved in this action was not open for entry until September 7th.

(Testimony of Harold W. Lewis)

The Court: I understood your objection to be that.

Mr. Hedges: Very well; all right.

Q. By Mr. Hedges: You had Plaintiffs' Exhibit 6 in your hand and also a duplicate of it, is that right?

A. That is correct.

Q. Now, what did you do at about noon, as you have testified, with this instrument, Plaintiffs' Exhibit 6, if anything?

A. We had for each location—for each location we had a board about four inches wide and about four feet long on which we had marked the name of it, the legal description of the claim, the name of the claim. That was put into the ground.

Q. You are referring to a stake now?

A. A stake.

Q. With this matter printed on the part—

A. Painted on with black paint. And when the duplicate lease—location notice was placed in a pint mason [69] jar at the base of that post.

Q. Well, did you go right to the location specified in Plaintiffs' Exhibit 6, Tropical No. 2? A. I did.

Q. On the morning of September 6th?

A. Around noon.

Q. Now, when you got to that location—and is that the location that is specified on Plaintiffs' Exhibit 1 on the blackboard, Tropical No. 2?

A. Northeast Quarter of Section 28. It would be that one to the right.

Q. You went to this location, referring to Tropical No. 2 on Plaintiffs' Exhibit 1? A. That is right.

(Testimony of Harold W. Lewis)

Q. What did you do—strike that. What time did you arrive at that location?

A. Well, it must have been shortly after lunch, the noon hour, because it took all the morning to prepare our work, so it was around twelve o'clock according to this.

Q. And was there anyone with you at that time?

A. According to the witnesses here Howard Hough and Wayne Hodgson.

Q. Do you recall of your own knowledge that they were with you at that time?

A. I think they were. [70]

Q. Now, when you got to the location tell us just exactly what you did physically on the property?

A. Physically we drove a post which was roughly four inches wide and four feet long that had been painted prior to that time with the name of the lease, the legal description of the lease and then we dug a small hole, probably five inches in diameter, and we placed a Mason jar in that hole and put the duplicate of this in, if that is the duplicate.

Q. The duplicate of Plaintiffs' Exhibit 6?

A. That is right.

Q. Placed in the jar? A. Yes.

Q. And the cap put back on?

A. Yes, the cap put back on.

Q. Just prior to the time you placed the duplicate of this instrument in the jar did you do anything with this instrument and the duplicate?

A. We would date it and time it.

Q. Don't say what you would do. What did you do?

A. We dated it, we timed it and we witnessed it.

(Testimony of Harold W. Lewis)

Q. Did you sign it at that time?

A. We signed it at that time.

Q. In other words, you signed the names of each of the plaintiffs in this action by yourself, timed the instrument and marked it twelve o'clock? [71]

A. No, I think we signed those before we went out there during the morning. We signed those up and then we—so far as my power of attorney went I signed my name in the morning and then when we arrived at the location we put in the post, we put in the Mason jar, we put the duplicate in the Mason jar and then witnesses were placed on there with the time.

Q. Did you time it at that time just prior to placing it in the Mason jar? A. We did.

Q. And what time did you mark on it?

A. 12:10 p.m., September 6th, 1945.

Q. All right. Now, at the time you marked that, designated that time upon the instrument, did Mr. Howard Hough and Mr. Wayne Hodgson witness the locating of the claim? A. They did.

Q. And so signed their names.

A. So signed their names.

Q. In the presence of—

A. In my presence and put the time on it.

Q. Now, I show you Plaintiffs' Exhibit 7 in evidence and ask you what you did with that instrument on the morning of September 6th, 1945?

A. That would have been in Section 21 and that was the Southeast Quarter. That would be the lower right-hand [72] quarter. That would be the lower right-hand quarter of Section 21.

(Testimony of Harold W. Lewis)

Q. Referring to Temperate No. 4 on Plaintiffs' Exhibit 1? A. Temperate No. 4, that is right.

Q. Now, there are two locations designated on the map. Do you recall which one of those two locations this claim was used on?

A. No, I don't. We did—went through the same procedure and made our location and those two holes that were dug later on, I don't think had any bearing as to the filing of this.

Q. What you did was post—what you did was drive your stake into the ground giving the location?

A. That is right.

Q. And placing the duplicate instrument in the glass jar? A. That is right.

Q. At a point approximately where those appear?

A. Where the locations are.

Q. On Temperate No. 4 on the map, is that correct?

A. That is right.

Q. And was this the next location that you made after you made the first one, Plaintiffs' Exhibit 6?

A. It was. [73]

Q. All right. And what time did you arrive at that location?

A. 12:17. I signed it. I signed it at 12:17.

Q. And did you post—strike that. Did you place the duplicate of Plaintiffs' Exhibit 7 in the glass jar at the base of the stake at that time? A. I did.

Q. At 12:17 p.m.? A. Yes, sir.

Q. September 6th?

A. September 6th, 1945, I did.

(Testimony of Harold W. Lewis)

Q. And did Mr. Howard Hough and Mr. Wayne Hodgson witness the placing of that in that location at that time? A. They did.

Q. I show you Plaintiffs' Exhibit 8 and ask you what you did with that instrument and the duplicate instrument, if there was one?

A. There was one. We went through the same procedure as we had done on the previous two. We signed them, we dated them. We timed them and they witnessed it and the duplicate was placed in the Mason jar.

Q. What time did you place the duplicate of this instrument in the Mason jar? A. 12:30.

Q. p.m.? [74]

A. p.m. September 6th, 1945.

Q. And did Mr. Howard Hough and Mr. Wayne Hodgson witness the placing of the duplicate in the Mason jar? A. They did.

Q. At that time? A. They did.

Q. I notice that they also have timed—

A. Their signatures.

Q. Their signatures. Mr. Hough at 12:32 and Mr. Hodgson at 12:30, is that correct?

A. That is correct.

Q. Now, I show you Plaintiffs' Exhibit 9 in evidence and ask you what you did with that instrument and the duplicate thereof, if there was a duplicate?

A. We drove a stake. We took the duplicate. We signed the time. It was witnessed and it was placed in the Mason jar and the time was 12:35 p.m., September 6th, 1945.

(Testimony of Harold W. Lewis)

Q. And that is Frigid No. 2 which is in this location on the map, Plaintiffs' Exhibit 1, is that right?

A. That would be the Northeast Quarter of Section 29, that is correct.

Q. And you placed the duplicate of Plaintiffs' Exhibit 9 in the Mason jar at 12:30 p.m., September 6th, 1945, is that correct?

A. They were placed in immediately after they signed [75] as witnesses and they put their time on and then it was put in the Mason jar.

Q. And did Mr. Howard Hough and Mr. Wayne Hodgson witness the placing of the duplicate of that instrument in the Mason jar? A. They did.

Q. And at the times specified on the instrument, 12:38 p.m. for Mr. Hough, and 12:38 p.m. for Mr. Hodgson?

A. That is right.

Q. All right. I show you Plaintiffs' Exhibit 10 in evidence, and ask you what you did with that instrument and the duplicate of it, if there was one, on September 6th, 1945?

A. Northeast Quarter of Section 20 that would be.

Q. Torrid No. 1 on the map, Plaintiffs' Exhibit 1?

A. That is right. We went through exactly the same procedure. We drove the post which had been marked, we signed it, we witnessed the signatures, placing the time on it, and then we put them in the Mason jar.

Q. What time did you post the duplicate of this notice of location in the Mason jar? A. 12:42.

Q. On September 6th?

A. September 6th, 1945.

(Testimony of Harold W. Lewis)

Q. Did Mr. Wayne Hodgson and Mr. Howard Hough witness the placing of the duplicate instrument in the Mason jar? [76] A. They did.

Q. And at approximately the time specified thereon? A. They did.

Q. 12:43 for Mr. Hodgson? A. That is right.

Q. And 12:44 for Mr. Hough?

A. That is right.

Q. I show you Plaintiffs' Exhibit 11 in evidence and ask you what you did with that instrument and the duplicate thereof, if there was one, on September 6th?

A. That is the Southwest Quarter of Section 21.

Q. Temperate No. 3?

A. That is right. We did exactly the same thing, followed the same procedure; putting the duplicate in the Mason jar after it had been witnessed and the time recorded.

Q. All right. And what time did you place that in the Mason jar, the duplicate of this Plaintiffs' Exhibit 11 in evidence?

A. I signed it at 12:45 p.m., September 6th, 1945. They signed it at 12:46 p.m., September 6th, 1945.

Q. You say "they." You mean Howard Hough and Mr. Hodgson?

A. Mr. Hough and Mr. Hodgson, that is right.

Q. I show you Plaintiffs' Exhibit 12 in evidence, and ask you what you did with that instrument and the duplicate [77] thereof, if there was one, on September 6th, 1945?

A. There was a duplicate. It was placed in the jar—the same procedure that had been followed.

(Testimony of Harold W. Lewis)

Q. We are referring now to Torrid No. 3, is that correct? A. Torrid No. 3.

Q. Right down here on the map, Plaintiffs' Exhibit 1?

A. That is right. The duplicate was put in the jar after it had been witnessed and the time recorded, 12:55 p.m., September 6th, 1945.

Q. Mr. Hodgson and Mr. Hough?

A. Both witnessed it.

Q. Witnessed the placing of the duplicate in the Mason jar? A. That is right.

Q. At what time? A. 12:55 and 12:58.

Q. 12:55 for Mr. Hodgson and 12:58 for Mr. Hough? A. Yes.

Q. I show you plaintiffs' Exhibit 13 in evidence, and ask you what you did with that instrument and the duplicate thereof, if there was a duplicate?

A. There was a duplicate.

Q. On September 6th?

A. There was a duplicate. We followed the same pro-[78] cedure. It was witnessed. The time recorded. The duplicate was put in the Mason jar and that was done at 1:00 p.m. September 6th, 1945. My signature went on, Wayne Hodgson at 1:01 p.m., and Mr. Hough at 1:03 p.m., September 6th, 1945.

Q. In other words, this shows two gentlemen witnessed the placing of the duplicate in the Mason jar?

A. That is right.

Q. I show you now Plaintiffs' Exhibit 14 in evidence and ask you what you did with that instrument and the duplicate thereof, if there was one, on September 6th, 1945?

A. That was the Northwest Quarter of Section 20.

(Testimony of Harold W. Lewis)

Q. Torrid No. 1. A. Torrid No. 1.

Q. Indicated in this position on the map?

A. I can't see it from here.

Q. Then step down.

A. It is right here. This is the one where I was overcome by the heat and I stopped probably a quarter of a mile from the placing of the instruments in the Mason jar. I signed the documents. I posted the time and I gave it to Wayne Hodgson and Mr. Fulmer and they went over and placed it in the Mason jar, a duplicate in the Mason jar.

Q. At what time?

A. That was 2:05 p.m. And they put it in the Mason [79] jar apparently at 2:16 p.m., September 6th, 1945.

Q. Did you post any further notices after that time on that date, September 6th? A. I did not.

Q. The heat got the best of you? A. Yes, sir.

Q. Now, I show you Plaintiffs' Exhibit 23 in evidence, and ask you what you did with that instrument and/or the duplicate thereof, if there was one, on September 7th, 1945?

A. On this one, on everything that was done on September 7th that I witnessed or had anything to do with, we merely witnessed the signatures, we placed the time on them, we put them in the Mason jar, because the Mason jars and the posts had already been placed the day before.

Q. In other words, you went out to the location, Torrid No. 4? A. That is right.

Q. The stake was already in the ground and the Mason jar was already in the ground?

A. That is right.

(Testimony of Harold W. Lewis)

Q. Was there a duplicate of this instrument, Plaintiffs' Exhibit 23? A. Yes, there was.

Q. There was? A. Yes, sir. [80]

Q. What did you do with it? Just place it in the jar?

A. We folded it and put it in the jar with the other one.

Q. At what time? A. 10:01 a.m.

Q. On September—

A. September 7th, 1945.

Q. Who witnessed the placing of that in the jar?

A. W. W. Bradshaw.

Q. You folded it and placed it in the jar with the other one?

A. That had been placed there the previous day.

Q. I show you Exhibit 25 in evidence and ask you what you did with that instrument and the duplicate thereof, if there was one, on September 7th, 1945?

A. There was a duplicate. At 10:05 I signed the last name. It was witnessed by Howard Hough and Wayne Hodgson.

Q. Referring now to the location known as, the claim known as Temperate No. 3?

A. Temperate No. 3. That was signed and—signed at 10:05 a.m. September 7th, 1945. The duplicate was placed in the Mason jar at the base of the stake.

Q. You placed it in each instance—in each instance you placed them in the jar? A. Yes, sir. [81]

Q. Now, I show you Plaintiffs' Exhibit 28 for identification and ask you what was done with that instrument

(Testimony of Harold W. Lewis)

and the duplicate thereof, if there was one, on September 7th, 1945?

A. Well, Mr. Bradshaw was the one who made the filing on that.

Q. Did you hand—you said there was a duplicate?

A. There was a duplicate.

Q. Did you hand the original and duplicate to Mr. Bradshaw? A. We did.

Q. On the morning of September 7th?

A. We did.

Q. And do you remember where you handed it to him?

A. We were in the car. That is all I can tell you.

Q. Was the car on the roadway that you indicated in here?

A. That is right. We used to drive back and forth to make it as short a walking distance as possible because of the heat.

Q. Did you ask him to file that claim?

A. We did.

Q. On the northwest Quarter of Section 21?

A. That is right.

Q. Known as Temperate No. 1? [82]

A. Temperate No. 1, yes, sir.

Q. Do you remember about what time you asked him to do that?

A. Well, they must have left before ten o'clock.

Q. Give us your best recollection—not what they must have done.

A. Well, I would say that they left about a quarter of ten in the morning and we all had our watches set according to Western Union time, with instructions not to file until ten o'clock.

(Testimony of Harold W. Lewis)

Q. All right. Now, what did you tell Mr. Bradshaw when you handed him that instrument and the duplicate?

A. He was to put the time on that he put the duplicate in the Mason jar.

Q. All right. Now, you will notice on this instrument the signature of W. W. Bradshaw. Are you familiar with his signature?

A. Well, I saw it down there.

Q. Can you identify that as Mr. Bradshaw's signature? A. I would say it was.

Q. And you handed him both instruments a little prior to ten o'clock. A. I would say yes.

Q. The instrument purports to be timed 10:42 a.m. Is that correct? [83] A. That is correct.

Q. How long after 10:42 a.m. if at all, did you see Mr. Bradshaw again on that morning of the 7th?

A. Yes, he came back in probably an hour or thereabouts—maybe a little less time. I can't recall. I don't recall the exact time he came back.

Q. And when he came back did he hand you anything?

A. He handed us the original.

Q. Plaintiffs' Exhibit— A. This exhibit.

Q. Plaintiffs Exhibit 28?

A. That is right. And Mr. Houck took it.

Q. Mr. Houck is one of the plaintiffs in this action?

A. That is right.

Q. And thereafter I believe you previously testified, you caused the sale to be recorded in the County Recorder's office? A. I did.

Q. Do you know who Mr. Bradshaw was?

A. He was a high school teacher at the El Centro school. He was a football coach but I don't know what else.

(Testimony of Harold W. Lewis)

Q. In 1945?

A. In 1945. He probably taught some subject.

Q. Did you make an effort to contact Mr. Bradshaw since that time? [84]

A. Yes. I have tried to locate him on several occasions and I understand he is now living in Texas some place.

Q. You contacted the school where he was employed at that time, at the time this instrument was signed in 1945?

A. I didn't personally but I had a man go over there to try to contact him.

Q. Did you get a report?

A. I got a report from him saying that he had left. He only taught one year and had gone to Texas.

Q. Now, the only time that elapsed was approximately twenty minutes between the time you first saw Mr. Bradshaw and the time he returned with Plaintiffs' Exhibit 28, is that correct?

A. I would say approximately that, yes.

Mr. Hedges: I will offer this, if your Honor please, as Plaintiffs' Exhibit 28.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 28, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 28 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 28, W. W. Bradshaw has signed as the party posting the Notice of Location, with the hour being written in as 10:42 o'clock A. M., and there are no witnesses to said posting who have signed thereon.]

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you now Plaintiffs' Exhibit No. 29 in evidence, and ask you whether or not you had a duplicate of that instrument and if so what you did with both instruments on September 7th, 1945?

A. The duplicate was placed in the Mason jar at the [85] base of the post in the Northeast Quarter of Section 20.

Q. On the claim known as—claim known as Torrid No. 2? A. Yes.

Q. By yourself?

A. By myself. And the time was 11:01 a.m.

Q. There was another claim in the jar at that time?

A. There was the claim which we had filed on the 6th in the jar at the time.

Q. Did you have anyone with you at that time?

A. No, I did not.

Q. That is the reason why there are no witnesses to the location? A. That is right.

Q. I show you now Plaintiffs' Exhibit 30 in evidence and ask you what you did with that instrument and the duplicate thereof, if there was one, on September 1945, that effects the claim known as Tropical No. 1 on the map. Plaintiffs' Exhibit 1.

A. Tropical No. 1 is right there, isn't it?

Q. That is correct.

A. That was right beside the road, within a few feet from the highway. That was the duplicate—the duplicate was put in the jar at 11:04 a.m.

Q. By yourself? [86]

A. By myself on September 7th, 1945.

(Testimony of Harold W. Lewis)

Q. Did you have any witnesses or other persons with you at that time? A. I did not.

Q. I show you Exhibit 31, Plaintiffs' Exhibit 31, in evidence, and ask you what you did with that instrument and the duplicate, if there was one, on September 7th, 1945, that affects the claim known as Frigid No. 1, indicated on the map, Plaintiffs' Exhibit 1?

A. That was placed in the Mason jar at 11:05 on September 7th—11:05 a.m., September 7th, 1945, and the witness was W. W. Bradshaw.

Q. You placed that in the jar?

A. I placed that in the jar, yes.

Q. Together—

A. With the one put in the previous day.

Q. And Mr. Bradshaw was there with you at that time? A. Yes, sir.

Q. And witnessed your placing it in the Mason jar?

A. That is correct.

Mr. Hedges: I think I am through with these claims if your Honor please. We will now go into a different line of questioning. It is 12:00 o'clock and a good time for a break.

The Court: All right, we will recess until 2:00 o'clock [87] p.m.

(Whereupon, at 12:00 o'clock noon, a recess was had until 2:00 o'clock p.m. of the same day.) [88]

Los Angeles, California, Tuesday, June 3, 1947

2:00 P. M.

The Court: You may proceed.

HAROLD W. LEWIS,

called as a witness by and on behalf of the plaintiffs, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed)

By Mr. Hedges:

Q. Mr. Lewis, did you go back on the property described in Plaintiffs' Exhibit No. 1, at any time after the 7th of September, the date of the second filing on the property?

A. I was there in the middle of October of the same year.

Q. And what did you do in the middle of October of 1945 when you went upon the property?

A. Went down to see that every notice of location was there—every notice of location was in the jar. I opened each and every jar to see that they were there.

Q. In other words, you went to the location designated on Plaintiffs' Exhibit 1, Torrid 1, Torrid 2, Torrid 3, Torrid 4; Temperate 1, Temperate 2, Temperate 3, Temperate 4; Frigid 1, Frigid 2, Frigid 3, Frigid 4; Tropical 1, Tropical 2, Tropical 3 and Tropical 4?

A. That is right. [89]

Q. And did you open the glass Mason jars in each instance at each location? A. I did.

(Testimony of Harold W. Lewis)

Q. And what did you find when you opened the glass jars?

A. Found the duplicate notices of location that had been placed there on the filings.

Q. In other words, did you find in each instance that the location notices to which we have previously referred, that is the ones placed in the jars on the 6th of September and the 7th of September, in each instance were in each of the respective jars? A. They were.

Q. Now, in the middle of October 1945 at the time to which you have referred, did you do any discovery work or any physical work upon the property at that time? A. Not at that time.

Q. When was the next time, then, after the middle of October 1945, that you went upon the property described in Plaintiffs' Exhibit 1?

A. I was down there on various occasions from then on until the latter part of November when we started the discovery work.

Q. You mean by that that you were on and off the property? [90] A. Several times.

Q. On several different occasions between October of 1945 and November of 1945? A. That is right.

Q. When did you commence the discovery work to which you have just referred?

A. The last week of November 1945.

Q. Now, will you tell us just what you did in connection with this work when you started and how many men you had with you and where you started and the work actually performed, if any?

A. We started along the highway.

(Testimony of Harold W. Lewis)

Q. Let us have a date, approximately, first.

A. That would be somewhere around the, probably the 23rd or 24th of November, 1945—right after Thanksgiving, whatever that day was, and carried on through.

Q. All right. Will you point out on the map, Plaintiffs' Exhibit 1, which location you went to first to perform your development or discovery work?

A. We had roughly the first day—I would say roughly 45 to 50 Mexicans. We took them out.

Q. Pardon me. Where did you recruit this crew from? A. Brawley.

Q. Did you truck them out there?

A. We trucked them out there. [91]

Q. Or carry them out there?

A. We trucked them out.

Q. You provided the transportation?

A. We provided the transportation, yes.

Q. All right.

A. We started—we paced off a spot back from the jar and the stake and set a crew of men to work at one spot. We took the next group and set in here—we distributed those along the main highway to do the work that was necessary.

Q. Were those locations staked out, the ones that are described on the map now, Plaintiffs' Exhibit 1, were they staked out?

A. They were marked out with a stake—not the four corners as I remember.

Q. As Mr. Imler testified? A. Yes.

(Testimony of Harold W. Lewis)

Q. And you started then on Temperate No. 4, is that correct?

A. I think we started on Temperate 4 and Tropical 2 at the same time, and then we took part of the crew up here.

Q. To the best of your memory now then you started on Temperate 4 and Tropical 2? A. I think so.

Q. And you say you had about 40 men?

A. That first morning we had about 40 men and then we [92] increased the crew up until one time I think we had somewhere around 65 men.

Q. Let us take Temperate No. 1 for example. Did you perform the work on that location or both of those locations, there being two locations designated on the map, by digging this so-called pit in the ground as Mr. Imler described? A. We did. We dug the hole.

Q. And how far did you dig?

A. We dug down, I think, about five feet.

Q. Now, when you say you dug, you mean these men that you had hired did the actual work. Was that by pick and shovel?

A. Pick and shovel, yes. Then we didn't come into any evidence of the mineral so we moved onto a high spot to try to discover it there, thinking we might be in a draw.

Q. You are referring to the fact that you moved from Location No. 1 to Location No. 2?

A. That is right.

Q. On Temperate No. 4, is that correct?

A. That is right.

Q. You did not discover any mineral in the first location? A. No.

(Testimony of Harold W. Lewis)

Q. You moved on to the second location. How deep did you dig that pit? [93]

A. I think we dug that approximately the same depth.

Q. Approximately five feet?

A. I would say four to five feet. I don't know what the figures show there. I can't see them.

Q. Did you have any particular reason for stopping at five feet?

A. None, other than the fact that we had dug far enough to see if there was anything there and we couldn't find it and we figured later on we might have to move to some other part of the section.

The Court: At what depth does this clay that you speak of being so valuable, usually is found?

The Witness: Some places, Judge, it is that far under the ground and some places it is quite a few feet under the ground.

The Court: Is that something like the stuff they use for building?

The Witness: No, no. This is altogether different. I have a piece of it in my pocket.

The Court: And the over-burden varies from place to place?

The Witness: Yes. There is a piece of it.

The Court: What is this used for?

The Witness: It is used as a food supplement for cattle.

The Court: In what form? Do you grind it? [94]

The Witness: It is ground and they use a small percentage with the grain feed.

(Testimony of Harold W. Lewis)

The Court: Does it have nutritional qualities? I know horses sometime take a mouthful of dirt. I didn't know they found it generally.

The Witness: From what the bio-chemists say, I don't think this develops any nutritional qualities. I think what it does is re-establish in the animal the minerals that are needed for assimilation.

The Court: To establish a balance?

The Witness: Yes, like the irons and calciums and so forth.

The Court: All right, go ahead.

Q. By Mr. Hedges: Now, did you move approximately the number of yards of dirt as testified to by Mr. Imler this morning from those two locations?

A. I think we did.

Q. That was 80 cubic yards. He testified 80 cubic yards on the No. 1 pit and 86.6 yards on the No. 2 pit.

A. In some instances those were extremely hard and others they were not.

Q. Did the men that you had working—strike that. How much did you pay these men that worked on this location? A. Day labor we paid \$1.00 per hour.

Q. \$1.00 per hour to each laborer? [95]

A. That is right.

Q. And did they perform work on the one location to which we are now referring, Temperate No. 3 or Temperate No. 4, rather, equal to the minimum amount of dollars as provided by the statute—that is, \$160.00 to each 160 acres? A. We did.

Q. Did they perform work in excess of that?

A. In excess to that, yes.

(Testimony of Harold W. Lewis)

Q. How much in excess of \$160.00 would you say?

A. Well, we tried to keep the crews, about 10 men each, because of work ability. It was easier for ten men to work in a hole than a big number and then we would work those men in that hole probably until they got down where the shoveling was too deep and we would work roughly two days.

Q. In other words, you would work until you had moved a sufficient—what you felt was a sufficient number of cubic yards of ground and until you had expended a sufficient amount of money to qualify under the statute, is that right? A. That is right.

Q. Now, where did you dig your next pit after you left Temperate No. 4?

A. We had a crew of men right along the highway and each one of those pits we had a group of people in that were—that would have been eight—we had eight holes on which we worked on the first six, as I remember, and as we finished [96] then we moved the crews up to replace and then we moved the dirt on the top end and the dirt on the lower end locations.

Q. I believe you said that you thought you had two crews, one working on Temperate 4 and Tropical 2 at about the same time? A. That is right.

Q. Now, on Tropical 2 did you move the quantity of material from that pit as testified to by Mr. Imler, approximately 33.7 cubic yards of material?

A. I think we did because that was—that was hard rock—rock was almost at the top of the surface and that was a complete pick and shovel job from the start to the finish.

(Testimony of Harold W. Lewis)

Q. Did you spend a sum of at least \$160.00?

A. We did.

Q. On Tropical No. 2? A. We did.

Q. Then was the claim known as Temperate No. 3 your next location as well as you can recall now?

A. Well, what we did—I don't think I made myself clear. As I say, we had 40 or 45 men and we had about four crews working at the same time, starting at this end and then crews working along as we went right along that highway.

Q. All right. Well, did you move on Temperate No. 3, there being two locations on that, the approximate number of [97] yards of material as testified to by Mr. Imler, namely, 53.0 cubic yards on the number 1 pit and 47.2 yards on the No. 2 pit? A. We did.

Q. And did you spend a sum for labor in excess of the sum of \$160.00 on that location? A. We did.

Q. And is that likewise true of Tropical No. 1 where Mr. Imler testified that 74.0 cubic yards were moved from the No. 1 pit and 47.1 cubic yards from the No. 2 pit?

A. That is correct.

Q. And did you spend a sum for labor in excess of the sum of \$160.00 on that claim? A. We did.

Q. And is the same thing true on Torrid No. 4 where Mr. Imler testified that you moved 32.5 cubic yards of material? A. We did.

Q. And did you spend a sum in excess of \$160.00 on that?

A. That was another spot that was almost solid rock.

Q. Is the same thing true of Frigid No. 2 where he testified you moved 93.7 cubic yards of material?

A. That is correct.

(Testimony of Harold W. Lewis)

Q. And did you spend the sum in excess of \$160.00 on that occasion? A. We did. [98]

Q. And is the same thing true of Torrid No. 3 where Mr. Imler testified— A. Which one is that?

Q. Torrid No. 3 is this location.

A. That is right, we did.

Q. On Plaintiffs' Exhibit 1? A. We did.

Q. Where he testified you moved 80.6 cubic yards of material? A. We did.

Q. And did you spend a sum of money in excess of \$160.00 on that location? A. Yes, sir.

Q. And is the same thing true of Frigid No. 1 on Plaintiffs' Exhibit 1 where he indicated you moved 125.5 cubic yards of material? A. We did.

Q. And is the same thing true on Torrid No. 1 up in the Northwest Quarter of Section 20, where he indicated you moved 46.0 cubic yards of material?

A. Yes. That was another spot that was very hard.

Q. And in each of these instances that I have gone over you expended in excess of \$160.00?

A. Yes, sir.

Q. In labor? [99] A. Yes, sir.

Q. And is the same thing true on Torrid No. 2 where he testified you moved 113.0 cubic yards?

A. We did.

Q. And Temperate No. 1 where he testified you moved 70.9 cubic yards? A. Yes, sir; we did.

Q. And Temperate No. 3 where he testified you moved 100 cubic yards? A. Yes, sir; we did.

Q. And in each of those instances did you spend the sum in excess of \$160.00 for each claim?

A. Yes, sir; we did.

(Testimony of Harold W. Lewis)

Q. And on Frigid No. 3, down here in the Southwest Quarter of Section 29, is it true that you moved in excess of 100 or an equal sum of 139.4 cubic yards as testified to by Mr. Imler? A. We did.

Q. And on Frigid No. 4 in the Southeast Quarter of the same section where he testified you moved 100 cubic yards, is that true? A. That is correct.

Q. And on Tropical No. 3 where Mr. Imler testified you moved 63.7 cubic yards of material, is that correct?

A. That is correct. That was another hard shot. [100]

Q. And on Tropical No. 4 Mr. Imler testified you moved 50.2 cubic yards of material. Is that correct?

A. That is correct.

Q. And in each of those instances did you spend a sum in excess of \$160.00 for each location?

A. We did.

Q. What was the total amount, if you recall, that you expended in connection with this development work on the four sections involved, 20, 21, 28 and 29?

A. A little over \$2,600.00, as I recall correctly.

Q. Does that area involve 2,560 acres?

A. It does.

Q. Now, with this total amount of money that you say you expended—I believe you said it was in excess of \$2,600.00? A. That is right.

Q. Did you build any buildings or outhouses or anything of that sort with that money?

A. No, not at all.

Q. What was the money used for in particular?

A. It was for, the great bulk of it was for the digging of the holes, the payroll.

(Testimony of Harold W. Lewis)

Q. That is labor, day labor, is that correct?

A. Day labor. I think the next largest item was the shovels and picks. [101]

Q. Which you purchased for the labor?

A. We had to furnish for the labor.

The Court: You confined yourselves to doing the minimum work necessary?

The Witness: Yes, sir.

The Court: You were not trying to exploit the property?

The Witness: Not then, no, sir.

Q. By Mr. Hedges: You stated sometime ago, I believe, that you were on this property in 1942?

A. That is right.

Q. Did you personally at that time do any digging on the property?

A. No, I didn't do any digging. I picked up some samples. And brought them in and had them analyzed.

Q. Where did you pick the samples up from? I mean, from this land described in Plaintiffs' Exhibit 1?

A. Yes.

Q. Some material that you picked up from the ground or was there a hole in the ground?

A. There was a side cliff.

Q. An open face cliff? A. Open face cliff, yes.

Q. And did that material contain the Montmorillonite clay that we have referred to in the stipulation on the property? [102]

A. According to the analysis by Smith-Emory.

Mr. Hedges: While counsel are examining the books, if you don't mind, I will proceed with some photographs I have here.

(Testimony of Harold W. Lewis)

Mr. Wood: May I see these first?

Mr. Hedges: Surely.

Q. By Mr. Hedges: I show you, Mr. Lewis, a photograph and ask you if you have ever seen that before?

A. Yes, I have.

Q. And I notice on the back of the photograph it is marked "Southwest Quarter of Section 21." Is that in your handwriting? A. It is.

Q. Southwest Quarter of 21 is the location marked Temperate No. 3? A. That is right.

Q. Is that correct? A. That is right.

Q. I will ask you whether or not that photograph—strike that. Is that your picture in the photograph?

A. It is.

Q. I will ask you whether or not that is a picture, is a true representation of the pit dug at that location on the Southwest Quarter of 21, being the location known as Temperate No. 3, and which one of the two locations is on [103] Plaintiffs' Exhibit 1 that represents?

A. That was the one closest to the road.

Q. The one nearest to the highway? A. Yes.

Q. That is marked No. 2 on Plaintiffs' Exhibit 1?

A. Yes.

Mr. Hedges: We offer that in evidence as Plaintiffs' next exhibit in order.

The Court: All right.

The Clerk: Plaintiffs' Exhibit 38 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 38, and was received in evidence.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: I show you a photograph on the reverse side of which appears the wording, "Southwest Quarter of Section 20." Is that in your handwriting?

A. It is.

Q. And have you ever seen that picture before?

A. I have.

Q. And does that represent the location on the Southwest Quarter of Section 20 which is Torrid No. 3?

A. That is right.

Q. Is that a true representation of the pit dug at that location? A. That is the corner of the pit.

Mr. Hedges: I offer that as Plaintiffs' next in order. [104]

The Court: It is admitted.

The Clerk: Plaintiffs' Exhibit 39 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 39, and was received in evidence.)

Q. By Mr. Hedges: I show you a photograph on the reverse side of which appears the wording, "Northwest Quarter of Section 20." A. Northeast.

Q. Northeast Quarter, I beg your pardon, of Section 28, which is Tropical No. 2. Is that correct?

A. Yes, sir.

Q. On Plaintiffs' Exhibit 1? A. Yes, sir.

Q. That was written, the wording was written on the back in your handwriting? A. That is right.

Q. Is that your picture? A. That is.

Q. In the center of the pit? A. That is right.

Q. And I will ask you whether or not that picture is a true representation of that location? A. It is.

Mr. Hedges: Offer that as Plaintiffs' next in order.

(Testimony of Harold W. Lewis)

The Court: It will be received. [105]

The Clerk: Plaintiffs' Exhibit 40 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 40, and was received in evidence.)

Q. By Mr. Hedges: I show you a photograph on the reverse side of which is written, "Northwest Quarter of Section 28," which is Tropical No. 1.

A. That is right.

Q. And ask you is that wording in your handwriting?

A. It is.

Q. Is that your picture? A. Yes, sir.

Q. In the photograph? A. Yes, sir.

Q. And which one of the two locations on that section does that represent?

A. We had a picture taken in each one and I don't know which one it was because one was no good.

Q. Can you tell whether this is the one, from that picture, whether this is the one closest to the highway or the one furthest away?

A. I think the one furthest away.

Q. That is the one marked No. 2 on the map?

A. I think it is.

Q. That was the second location that was dug, and is that correct? [106] A. Yes, sir.

Q. And is that a true representation of the pit on that location? A. It is.

Mr. Hedges: I offer that as Plaintiffs' next in order.

The Court: When were the photographs taken?

The Witness: They were taken between four or five weeks ago.

(Testimony of Harold W. Lewis)

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 41 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 41 and was received in evidence.)

Mr. Hedges: Your Honor will notice from the pictures the sand has blown back into the pit.

The Court: Yes.

Q. By Mr. Hedges: I show you a photograph on the reverse side of which appears the wording "North-east Quarter of Section 29," which is marked "Frigid No. 2," on Plaintiffs' Exhibit 1, and ask you did you write that location on the back of the photograph?

A. I did.

Q. It is in your handwriting? A. Yes, sir.

Q. That is your picture in the center of the pit?

A. That is right. [107]

Q. Is that a correct representation of the pit on that location? A. It is.

Mr. Hedges: I offer that as Plaintiffs' next in order.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 42 in evidence.

(The document referred to was marked as Plaintiffs Exhibit 42, and was received in evidence.)

Q. By Mr. Hedges: I show you a photograph on the back of which is marked "Postmark and bottle containing location notices" and ask you whether or not that is a true representation of the stake to which you referred this morning and the bottle in which you placed these location notices on each of the claims marked on Plaintiffs' Exhibit 1?

(Testimony of Harold W. Lewis)

A. That is right. And I tried to get it—to take the picture of the stake so it would show the writing but I couldn't do it. It was too bright.

Q. That is a correct representation of the manner in which you located the stake and bottle on each of the locations?

A. With the exception I had the bottle in the ground. We took it out there to take the picture because the bottle wouldn't show in the ground.

Mr. Hedges: I ask that be received as plaintiffs' next in order. [108]

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 43 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 43 and was received in evidence.)

Q. By Mr. Hedges: I show you a photograph on the reverse side of which is marked "Southwest Quarter of Section 20," being the location Torrid No. 3?

A. That is right.

Q. On the map, Plaintiffs' Exhibit 1?

A. That is right. I took three pictures there and put them together to get three different views of the surrounding hills and deposits.

Q. Do each of the three pictures show a true representation of that one location? A. They do.

Mr. Hedges: We offer the three together then in evidence as Plaintiffs' next in order.

The Court: They will be received.

The Clerk: Plaintiffs' Exhibit 44 in evidence.

(The documents referred to were marked as Plaintiffs' Exhibit 44, and were received in evidence.)

(Testimony of Harold W. Lewis)

Q. By Mr. Hedges: Now, I show you what appears to be a timebook which is marked on the face of the cover "Workmen's Standard Timebook," containing a number of pages, some of which are blank, and some of which contain writing, and ask [109] you if you have ever seen that before? A. I have.

Q. When did you first see it?

A. The day the Mexican foreman made up the list of names.

Q. Did you purchase the book? A. I did.

Q. And that is your handwriting in the book?

A. No. There is some up here—that is, but the names are not mine.

Q. Referring to the top portion of the book?

A. That was put on there—

Q. Just a minute. Did you give the book to anyone?

A. None other than the foreman who carried it to make the payroll.

Q. That is what I am getting at. Did you purchase the book and did you give it to the foreman after you purchased it? A. I did.

Q. What was the foreman's name?

A. I had two foremen. As a matter of fact, I had three foremen. I had two Mexican foremen and one was named Trinidad Roso and the other was Camillio, and I had Wayne Hodgson, too, when we had a crew of white boys.

Q. Did more than one foreman have the book at any one [110] time? A. No.

Q. Do you remember who you gave it to first?

A. Lawrence Camillio.

(Testimony of Harold W. Lewis)

Q. And did you give them any instructions when you handed him or them the book?

A. We hired our crew and as we hired them we put their names down. I couldn't speak Spanish and they couldn't speak English, so he took their names and wrote them down.

Q. You mean the page to which you are referring now, which is the second page in the book containing the list of names which appear to be all Mexican, or of Mexican descent, at least, were written in by the foreman, is that right? A. That is correct.

Q. Under your direct supervision?

A. I stood right there and watched him.

Q. And is that true in each instance where a name appears in the book?

A. That is true in all the Mexican names excepting when we got over here to the white boys who were high school boys. I wrote that.

Q. Now, you are referring to page 5 of the book?

A. That is right.

Q. The names appearing on that page are in your handwriting? [111]

A. I printed them in but the figures of the time Wayne Hodgson put in.

Q. That was one of your foremen to whom you referred? A. That is right.

Q. Were those figures and the amounts that appear on the right-hand margin put in there under your direction and supervision? A. That is right.

Q. And at your request?

A. At my request, yes.

(Testimony of Harold W. Lewis)

Q. Now, I notice there are some names over to the rear of the book.

A. On the last page there is a list of names. Those were surplus names that we would use in the event we needed them.

Q. Just a minute. You are referring now to the next to the last page of the book and the names appearing on that sheet. Those men performed no work?

A. Unless some of these few we will have to check the names to see if they were in the payroll.

Q. But there are no hours after it? A. No.

Q. Nor any amount of money? A. No.

Q. Now, on the third page— [112]

A. From the back?

Q. From the back there appears a group of five names.

A. That is right.

Q. Do you know in whose handwriting those names are?

A. That was in the other foreman's. His name was Roso.

Q. He is the third foreman that you referred to?

A. He is the third foreman.

Q. Were those names put in there under your direct supervision? A. I saw him put those in.

Q. You saw him write them? A. Yes, sir.

Q. Now, do the hours that appear after each man's name in each instance represent the number of hours that he worked on these locations set forth in Plaintiffs' Exhibit 1? A. Yes.

Q. And does the amount of money set forth after each name represent the amount that he was paid?

A. It does, the total.

(Testimony of Harold W. Lewis)

Q. Who made payment to each of these men and how was it made?

A. I went to the Bank of America, main office in Los Angeles, and purchased a cashier's check. I took it to the Bank of America office at Brawley where, with the assistance of the manager and the money teller, I guess you would call him, they made up the various amounts of money needed. We put them in envelopes and paid the individual men.

Q. Let us not go too fast here. Did you take these men down to the bank?

A. We took them to the bank or they met us at the bank on the last day.

Q. Each one of the men's names that are set forth in this book were taken or appeared at the bank?

A. Appeared at the bank.

Q. Bank of America at Brawley, is that correct?

A. That is right.

Q. Were they paid the amounts that are set forth after their respective names?

A. They were, less the deductions that had been advanced where we gave them a dollar or fifty cents or something.

Q. Do you know the name of the teller of the bank?

A. Mr. Eddy.

Q. And the name of the manager there?

A. Mr. Farie.

Q. And were you present at the bank at the time this amount of money was paid to these parties named in here?

A. I was.

Mr. Hedges: We offer this in evidence as Plaintiffs' [114] next in order.

(Testimony of Harold W. Lewis)

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 45 in evidence.

(The timebook referred to was marked as Plaintiffs' Exhibit 45 and was received in evidence.)

Q. By Mr. Hedges: I show you what appears to be a statement to Eugene H. Imler, addressed to Mr. H. W. Lewis, Minerals Industries Corporation, and ask you if you have seen that before? A. Yes.

Q. Was that submitted to you—strike that. Do you know what those services were for for which the bill shows a total of \$62.00?

A. It was for his crew who met us on the morning of the 6th of September to make—

Q. 1945?

A. 1945. To make corner locations and to set stakes for the posting of the property together with the work done by his man, Hodgson, on the day of the 7th, plus his—

Q. You have a notation on there, "Paid two seven four six by company check." Is that your handwriting?

A. That is my handwriting.

Q. Now, was this \$62.00 that you paid to Mr. Imler for his services in surveying the land? That is not this survey, is it? [115] A. No, sir.

Q. That is the one made in 1945?

A. Yes, the one made in 1945.

Q. Is that part of the sum of some \$2,600 odd dollars you said you expended?

A. That was put in there, yes, sir.

Q. And in addition to the sums of labor which we have just gone over and this sum of \$62.00, you said that you

(Testimony of Harold W. Lewis)

spent some other monies for picks and shovels. Do you recall how much was spent in that connection?

A. We spent considerably over \$100.00, if I recall. We had about 50 shovels and we had about 25 picks, and they cost somewhere in the neighborhood of \$2.00 apiece.

Q. I believe you said you purchased some tape. By that I assume you mean steel tape for measuring?

A. That is right.

Q. Do you recall what you expended for that?

A. I think it was \$5.00. It was standard steel tape.

Q. Did you charge any gasoline and oil for transportation around the property to this \$2,600?

A. The only gas and oil was charged in the two trucks, gasoline and oil to haul the men back and forth from Brawley.

Q. Do you recall how much was spent in that connection? A. A little over \$80.00.

Q. Was there any other money spent in that connection? [116]

A. Well, water containers and things of that nature.

Q. You had to purchase water containers—that is to carry water? A. For the men.

Q. For the workmen, is that correct?

A. The men. It was terribly hot.

Q. In mid-September?

A. Yes—no, that was in December.

Q. November and December, but still it was awfully hot to work? A. Yes.

Q. Do you recall how much you expended for water containers?

A. Well, they would steal them just about as fast as I could take them out there. I bought a lot of them. I

(Testimony of Harold W. Lewis)

don't know how many. I would say \$15.00 or \$20.00 worth.

Q. Those are the only items that you have included in the total sum of \$2,600 that you spent in connection with the development of the property?

A. That is correct.

Q. Previously I questioned you on Plaintiffs' Exhibit 4 for identification, which is the so called substituted power of attorney that you gave to W. W. Bradshaw on September 6th, 1945. I believe you testified that you had a sunstroke just about—prior to the time that you made this out? [117] A. Two o'clock roughly.

Q. And you were unable to continue your activities on the property? A. That is right.

Q. Was that the reason you appointed under your power of attorney Mr. Bradshaw?

A. That is right.

Mr. Hedges: We will offer this Plaintiffs' Exhibit 4 for identification in evidence.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 4, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 4 is similar to Exhibit No. 2 on page 76 except that on the second page of Exhibit No. 4 is written the following:

"September 6, 1945

I hereby delegate, substitute and appoint W. W. Bradshaw for me and in my name, place and stead to exercise and perform all of the powers conferred upon me by the foregoing instrument.

(Signed) H. W. Lewis

In the Presence of

(Signed) Stanley B. Houck."]

(Testimony of Harold W. Lewis)

Mr. Hedges: You may cross examine, gentlemen.

Cross-Examination

By Mr. Painter:

Q. Mr. Lewis, this rate of \$1.00 per hour, was that the going rate for day laborers in this locality at that time?

A. I think that was quite a low rate for labor to get to go onto the desert.

Q. According to your best knowledge what would you say was the going rate for this particular type of work? Do you understand it was more than a dollar an hour?

A. I didn't hear the first part of your question.

Q. Is it your statement that the going rate for laborers, day laborers for this type of work was more than \$1.00 per [118] hour at that time?

A. I don't think so. I think that day labor was available at around \$1.00 an hour if you could get it.

Q. And that was the general going rate in the locality? A. I think so.

Q. In this booklet which has been marked as Plaintiffs' Exhibit No. 4, does this booklet contain the full and complete figures on the monies which were paid to the Mexican laborers in the latter part of November or the early part of December for what we will call the "discovery work" done at that time and which you have testified to?

A. That was the payrolls that were paid for the digging of the holes.

(Testimony of Harold W. Lewis)

Q. Now, did you issue a check to the Bank of America and did then the Bank of America issue the cash to you with which to pay the men?

A. I bought a cashier's check.

Q. You bought a cashier's check? A. Yes, sir.

Q. Do you have the receipts for your cashier's check yet?

A. I think that the Bank of America at Brawley can identify that it was cashed there.

Q. In other words, you cashed all of these cashier's checks or whatever cashier's checks you had at the Bank of [119] America in Brawley, is that correct?

A. That is right.

Q. And was it all done on one day?

A. No. Part of the payroll—for instance, the boys, the high school boys I paid them at at an entirely different time than I paid the other men.

Q. Well, did you pay the high school boys by the same method? A. Cash.

Q. By cash? A. Yes.

Q. And does the amount of money which you paid to the high school boys in cash appear in that book as a separate and distinct item from the amount you paid to the Mexican laborers? A. Yes.

Q. And that amount is \$256.50, is that correct?

A. Correct.

Mr. Painter: That is all.

The Court: Any other questions?

Mr. Wood: I would like to ask a few questions.

Q. By Mr. Wood: Mr. Lewis, referring to the claim marked Torrid No. 4, on which Plaintiffs' Exhibit No. 1 shows two holes here, were you down there at the time they were digging those holes? A. Yes. [120]

(Testimony of Harold W. Lewis)

Mr. Hedges: Pardon me. You said "Torrid No. 4." There is only one hole on that.

Mr. Wood: Temperate, I meant, pardon me. I am sorry. Temperate No. 4 showing two holes.

Q. By Mr. Wood: Were you there when both those holes were dug? A. Yes, sir.

Q. You are positive of that? A. I think so.

Q. And were you present when both of the holes were dug that are shown on Temperate No. 3? A. Yes.

Q. You are just as positive of that as the other testimony you have given here today? A. I am.

Q. Now, these Mexicans that you were using, who hired them for you?

A. Lawrence Camillio. And later on, Trinidad Roso.

Q. Do you know whether or not they had work permits to work in the United States?

Mr. Hedges: That is objected to as wholly immaterial. It has no bearing on the issues in this case.

The Court: I do not see the materiality of that. Half of the Mexicans living in the Imperial Valley are illegally in the country. [121]

Mr. Wood: I agree with your Honor on that.

The Court: If you ever took them out of there you would start a revolution.

Mr. Wood: I agree with you, your Honor.

The Court: We deal with that problem when holding court in San Diego. I don't think it is material. The objection is sustained.

Mr. Wood: I think that is all.

The Court: Any redirect examination?

Mr. Hedges: No, your Honor.

The Court: Step down. Call your next witness.

Mr. Hedges: Call Mr. Howard Hough.

HOWARD HOUGH,

called as a witness by and on behalf of the plaintiffs' having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Howard Hough.

Direct Examination

By Mr. Hedges:

Q. Where do you reside, Mr. Hough?

A. Imperial.

Q. Is that the proper pronunciation of your name?

A. Yes.

Q. You live in Imperial? [122] A. Yes, sir.

Q. Do you have a box number or street address?

A. Box 621.

Q. Now, were you retained by anyone to go upon the property described in Plaintiffs' Exhibit 1 on or about September 6th of 1945? A. That is right.

Q. And by whom were you asked to go upon the property? A. Mr. Lewis and Mr. Houck.

Q. I show you Plaintiffs' Exhibit 5 for identification, which is an acceptance of stipulations, reservations, and power of attorney, and call your attention to the handwritten portion of the document on the bottom of page 2, which says, "I hereby delegate, substitute and appoint Howard H. Hough for me and in my name, place and stead, to execute, perform all the powers conferred upon me by the foregoing instrument dated September 6th, 1945," and signed "H. W. Lewis," and ask you if you have seen that instrument before? A. Yes, sir.

Q. And when did you see it?

A. September 6th, 1945.

(Testimony of Howard Hough)

Q. Was it handed to you by someone?

A. By Mr. Lewis himself.

Q. Was that after Mr. Lewis had had his sunstroke that he previously testified to? [123]

A. That is right.

Q. On September 6th? A. Yes, sir.

Mr. Hedges: We at this time, if your Honor please, offer Plaintiffs' Exhibit 5 for identification in evidence.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 5, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 5 is similar to Exhibit No. 2 on page 76 except that on the second page of Exhibit No. 5 is written the following:

"I hereby delegate, substitute and appoint Howard W. Hough for me and in my name, place and stead to exercise and perform all of the powers conferred upon me by the foregoing instrument.

September 6, 1945.

(Signed) H. W. Lewis

In the Presence of

(Signed) W. W. Bradshaw

(Signed) V. G. Fulmer"]

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 15 for identification, being a location notice and dated September 6th, 1945, purporting to bear the signatures of yourself at the bottom of the location, and I will ask you to inspect that document and tell me whether or not those are your signatures at the bottom of the page?

A. That is right.

(Testimony of Howard Hough)

Q. Appearing as attorney in fact for the plaintiffs that are named in this lawsuit, is that correct?

A. That is correct.

Mr. Hedges: We offer this Plaintiffs' Exhibit 15 in evidence.

Mr. Painter: May we have the same objection as heretofore made to any and all claims or, rather, notices of location which bear the date of September 6th, without repeating that objection?

The Court: All right. [124]

Mr. Painter: Insofar as this witness is concerned.

The Court: All right.

The Clerk: Plaintiffs' Exhibit 15 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 15, and was received in evidence.)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 16 for identification, being a notice of location dated September 6th, 1945, on the bottom of which appears in several places the signature H. W. Hough, and ask you whether or not those are your signatures?

A. No, no, it is H. H. Hough.

Q. Are those your signatures on the bottom of that page? A. That is right.

Q. And the date of September 6th, 1945 appears thereon? A. That is correct.

Mr. Hedges: We offer this as Plaintiffs' next in order in evidence as Exhibit 16.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 16, and was received in evidence.)

(Testimony of Howard Hough)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 17 for identification, dated September 6th, 1945, and call your attention to the signature H. H. Hough appearing at the bottom of that document, and ask you whether or not the [125] signature that appears thereon is your signature—are they your signatures? A. They are.

Q. That is dated September 6th, 1945?

A. Correct.

Mr. Hedges: I offer that as Plaintiffs' Exhibit 17 in evidence.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 17, and was received in evidence.)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 18 for identification, dated September 6th, 1945, and call your attention to the bottom of the page where there appears the signatures of H. H. Hough, and ask you whether or not those are your signatures? A. They are.

Q. And the date of September 6th, 1945?

A. Correct.

Mr. Hedges: I offer that as Plaintiffs' Exhibit 18 in evidence.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 18, and was received in evidence.)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 19 for identification, dated September 6th, 1945, and I

(Testimony of Howard Hough)

call your [126] attention to the signatures appearing at the bottom of the page, the signatures H. H. Hough, and ask you whether or not those are your signatures?

A. That is correct.

Mr. Hedges: I offer this instrument as Plaintiffs' Exhibit 19.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 19, and was received in evidence.)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 20 for identification, dated September 6th, 1945. I call your attention to the signatures, H. H. Hough, appearing at the bottom thereof, and ask you whether or not those are your signatures? A. That is correct.

Mr. Hedges: I offer this as Plaintiffs' Exhibit 20 in evidence.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 20, and was received in evidence.)

Q. By Mr. Hedges: I show you Plaintiffs' Exhibit 21 for identification, dated September 6th, 1945. I call your attention to the signatures appearing at the bottom of the page and ask you whether or not those are your signatures? A. They are. [127]

Mr. Hedges: I offer this as Plaintiffs' Exhibit 21 in evidence.

(Testimony of Howard Hough)

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 21, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibits 7-21, inclusive, are similar to Exhibit No. 6, save and except as hereinafter set forth:

- (a) Each of said exhibits contains the correct time of filing, correct claim name and legal description of the claim involved and the respective book and page in which each of said claims was recorded in the office of the County Recorder of Imperial County;
- (b) Plaintiffs' Exhibit 14 contains the signatures of V. G. Fulmer and Wayne H. Hodgson as witnesses;
- (c) Plaintiffs' Exhibits 15, 16, 17, 18 and 20 are signed by H. W. Lewis as the party who executed the Notice of Location for the respective locators; a line has been drawn through said signature, and the signature of H. H. Hough appears in lieu thereof; that J. R. Burns and M. J. Koppel signed as witnesses and lines have been drawn through said signatures;
- (d) Plaintiffs' Exhibits 19 and 21 have the same deletions and additions as appear in Exhibits 15, 16, 17, 18 and 20, except that there are no witnesses's signatures on said claims.]

Q. By Mr. Hedges: Now, on September 6th, 1945, at the instance of Mr. Lewis, did you file the claim—that is, the duplicate of the claim marked Exhibit 15 which you identified here, on a location known as Temperate No.

(Testimony of Howard Hough)

1? That is the Northwest Quarter of Section 21, appearing here on Plaintiffs' Exhibit 1?

A. Northwest Quarter?

Q. Northwest Quarter? Isn't that what it says there?

A. That is right, that is correct; yes, sir.

Q. Now, was anyone with you at the time you filed this location notice? A. I believe there was.

Q. I call your attention to the fact that there were some signatures at the bottom under the heading, "Witness" which were crossed off.

A. As I recall, there was one other man with me at this time.

Q. Well, he did not sign as a witness, however, on the location notice, did he? A. It appears not. [128]

Q. All right. Now, do you have a duplicate of this?

A. Yes, sir.

Q. Notice, Plaintiffs' Exhibit 15? A. Yes, sir.

Q. And what did you do with that notice?

A. It was signed and placed in the fruit jar near the sign describing it, this above property, Northwest Quarter of Section 21.

Q. At or about the time that is designated on Plaintiffs' Exhibit 15, which is 5:00 p.m.? A. Yes, sir.

Q. Did you mark that time on there?

A. Yes, sir.

Mr. Painter: Mr. Hedges, we can barely hear the witness over here.

Q. By Mr. Hedges: Speak up a little louder.

I show you Plaintiffs' Exhibit 16, which is a location notice on the Southeast Quarter of Section 28, and ask

(Testimony of Howard Hough)

you if you had a duplicate of that location notice on the 6th of September?

A. Yes, sir; there was a duplicate filed.

Q. What did you do with the duplicate of that location notice?

A. The duplicate was signed and dated and placed in the fruit jar near the sign. [129]

Q. At or about the time that is designated on Plaintiffs' Exhibit 16, which is 5:20 p.m., September 6th, 1945?

A. That is right.

Q. Is that the time—did you put that time in there?

A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 17, which is a location notice on the Northeast Quarter of Section 20, designated as Torrid No. 2, and ask you if you had a duplicate of that notice on September 6th, 1945?

A. Yes, sir; there was a duplicate also of this one which was placed in the fruit jar near the sign marking this quarter section and also dated as to time, 5:26 p.m.

Q. 5:26 p.m. on September 6th, 1945 are figures and letters that you wrote? A. Yes, sir.

Q. On Plaintiffs' Exhibit 17? A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 18 which is a location notice on the Southwest Quarter of Section 28, the claim known as Tropical No. 3, and ask you if you had a duplicate of that notice on September 6th, 1945?

A. Yes, sir.

Q. What did you do with the duplicate of that notice?

A. The duplicate was placed in a fruit jar with my [130] signature and the date and 5:50 p.m.

(Testimony of Howard Hough)

Q. 5:50 p.m., September 6th, 1945 appears in your handwriting on Plaintiffs' Exhibit 18?

A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. I show you Plaintiffs' Exhibit 19, which is a location notice affecting the Southeast Quarter of Section 29, being known as Frigid No. 4, and ask you if you had a duplicate of that notice on September 6th, 1945?

A. Yes, sir.

Q. And did you do substantially the same thing with that notice as you previously testified? A. I did.

Q. Did you place that duplicate notice in the fruit jar at or about the time that appears on Plaintiffs' Exhibit 19, which is 5:50 p.m., September 6th, 1945?

A. I did.

Q. Was that in your handwriting?

A. Yes, sir, that is my handwriting.

Q. I show you Plaintiffs' Exhibit 20, which is a location notice affecting the Northeast Quarter of Section 21, known as Temperate No. 4, and ask you if you had a duplicate of that notice? A. Yes, sir. [131]

Q. Did you do substantially the same thing as previously testified to with the duplicate? A. I did.

Q. And did you place it in the fruit jar at that location at or about the time Plaintiffs' Exhibit 20 bears, which is 6:05 p.m., September 6th, 1945?

A. I did.

Q. And those figures and letters are in your handwriting? A. They are.

Q. I show you Plaintiffs' Exhibit 21, which is a location notice affecting the Southwest Quarter of Section

(Testimony of Howard Hough)

29, known as Frigid No. 3, and ask you whether or not you had a duplicate of that notice on September 6th, 1945?

A. Yes, sir.

Q. And did you place that duplicate in the fruit jar on that location at or about the time as is set forth on Plaintiffs' Exhibit 21, which is 6:45 p.m., September 6th, 1945? A. Yes, sir.

Q. And those letters and figures are in your handwriting? A. They are.

Q. I show you Plaintiffs' Exhibit 6, which is a location notice affecting the Northeast Quarter of Section 28, on [132] the claim known as Tropical No. 2. I call your attention to the signature at the bottom under the heading "Witnesses" of Howard H. Hough, September 6th, 1945, 12:11 p.m. Is that your signature?

A. Yes, that is.

Q. Was that placed upon Plaintiffs' Exhibit 6 at the date it bears and at the time? A. Yes, sir.

Q. And you witnessed the filing of this particular claim, Plaintiffs' Exhibit 6? A. I did.

Q. And Mr. Hodgson was with you at that time?

A. That is right.

Q. And did he sign this in your presence?

A. Yes, sir.

Q. On that date? A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 7, which is a location notice affecting the Southeast Quarter of Section 21, dated September 6th, 1945. I call your attention to the signature "Howard H. Hough," September 6th, 1945, 12:18 p.m., and ask you if that is your signature?

A. That is.

(Testimony of Howard Hough)

Q. And did you sign it on the date that the instrument bears, September 6th, 1945? [133] A. I did.

Q. And did you sign it at approximately 12:18 p.m. as therein indicated? A. Yes, sir.

Q. And was Mr. Hodgson present at the time that you signed the instrument? A. He was.

Q. He signed in your presence? A. Yes, sir.

Q. I call your attention to Plaintiffs' Exhibit 8, which is a location notice affecting the Northwest Quarter of Section 28, known as Tropical No. 1, dated September 6th, 1945, and call your attention to the signature "Howard H. Hough, September 6th, 1945, 12:32 p.m." appearing at the bottom thereof, and ask you whether or not that is your signature? A. That is my signature.

Q. And did you sign it on the date that the instrument bears, September 6th, 1945? A. I did.

Q. At or about the time as is stated therein?

A. Yes, sir.

Q. And was Mr. Hodgson present at that time?

A. He was.

Q. And did he sign the instrument in your presence? [134] A. He did.

Q. I show you Plaintiffs' Exhibit 9, which is a location notice on the Northeast Quarter of Section 29, being claim known as Frigid No. 2, dated September 6th, 1945. I call your attention to the signature "Howard H. Hough" appearing at the bottom of the instrument—"Howard H. Hough, September 6th, 1945, 12:38 p.m." and ask you if that is your signature? A. That is.

Q. And did you sign the instrument on the date that it bears, September 6th, 1945, at or about the time that appears thereon? A. I did.

(Testimony of Howard Hough)

Q. And was Mr. Hodgson with you at that time?

A. He was.

Q. Did he sign in your presence? A. He did.

Q. I show you Plaintiffs' Exhibit 10, being a location notice affecting the Southeast Quarter of Section 20 on a claim known as Torrid No. 4, dated September 6th, 1945. I call your attention to the signature appearing at the bottom of the page, "Howard H. Hough, September 6th, 1945, 12:44 p.m." and ask you if that is your signature? A. That is.

Q. And you signed it on the date the instrument bears, [135] September 6th, 1945, at or about the hour therein set forth? A. I did.

Q. And was Mr. Hodgson present at that time?

A. He was.

Q. And did he sign in your presence?

A. Yes, sir; he did.

Q. I call your attention to Plaintiffs' Exhibit 11, which is a location notice affecting the Southwest Quarter of Section 21, on a claim known as Temperate No. 3, dated September 6th, 1945, and call your attention to the signature appearing at the bottom thereof, "Howard H. Hough, September 6th, 1945, 12:46 p.m.," and ask you whether or not that is your signature? A. It is.

Q. Was it signed on the date the instrument bears, September 6th, 1945, at the hour of 12:46 p.m.?

A. Yes, sir.

Q. And Mr. Hodgson was present at the time?

A. That is right.

Q. Signed it in your presence?

A. That is right.

(Testimony of Howard Hough)

Q. I call your atention to Plaintiffs' Exhibit 12, which is a location notice affecting the Southwest Quarter of Section 20, representing a claim known as Torrid No. 3, and dated September 8th, 1945. I call your attention to the signa-[136] ture "Howard H. Hough" appearing at the bottom of the page, September 6th, 1945, 12:58 p.m., and ask you if that is your signature? A. It is.

Q. And did you sign the instrument at the date and time therein indicated? A. Yes, sir.

Q. Was Mr. Hodgson present with you at that time?

A. He was.

Q. And did he sign the instrument in your presence?

A. Yes, sir.

Q. I call your attention to Plaintiffs' Exhibit 13, which is a location notice affecting the Northwest Quarter of Section 29, representing the claim known as Frigid No. 1, dated September 6th, 1945, and call your attention to the signature appearing at the bottom of the page, "H. H. Hough, September 6th, 1945, 1:03 p.m.," and ask you if that is your signature? A. Yes, sir.

Q. And did you sign it on the date and at the time therein indicated? A. I did.

Q. Was Mr. Hodgson present at that time?

A. He was.

Q. Did he sign in your presence? [137]

A. Yes, sir.

Q. I show you an instrument—I show you Plaintiffs' Exhibit 14, which is a location notice affecting the Northwest Quarter of Section 20, on a claim known as Torrid No. 1, dated September 6th, 1945—strike that.

This is one that you didn't have anything to do with.

(Testimony of Howard Hough)

Now, in each instance on the claims that you located —strike that

In each instance where you witnessed the signature of the locator as you have testified, did you actually see the duplicate notice placed in the Mason jar on the particular property? A. Yes, sir.

The Court: You merely went along as a witness, isn't that true?

The Witness: And also to help locate the corners.

The Court: Locate the corners?

The Witness: Yes, sir.

The Court: You have no interest in the claims?

The Witness: No interest whatsoever.

The Court: Were you paid for your services?

The Witness: Yes, sir.

The Court: What is your occupation?

The Witness: Surveyor. [138]

The Court: You are a surveyor?

The Witness: Yes, sir.

The Court: Licensed in California?

The Witness: No, I am not a licensed surveyor.

The Court: You are not licensed?

The Witness: No.

Mr. Hedges: No further questions, your Honor. You may cross examine.

The Court: Any questions, gentlemen?

Mr. Painter: May I speak to counsel for just a moment?

The Court: All right.

Mr. Painter: Your Honor, there is one exhibit, Exhibit No. 25, in which it appears that this witness witnessed a posting of a notice. The Court: Yes.

(Testimony of Howard Hough)

Mr. Painter: And counsel did not ask him anything about that on direct examination. It is not exactly proper cross examination but I understand this witness would like to get back to Brawley.

The Court: All right.

Mr. Painter: And I wondered if it would be asking too much if I might question him about his signature on that one out of order?

The Court: Yes.

Mr. Painter: Other than that I have no cross examination. [139]

The Court: Gentlemen, you want to be careful in a case like this. There are so many exhibits and you must be careful about returning them to the clerk.

Mr. Hedges: You are right. I have lost some already.

The Court: Each time you leave the courtroom return them to the clerk, otherwise we will have to hunt for our exhibits.

Mr. Hedges: That was strictly an oversight on my part. Do you mind if I finish?

Mr. Painter: He is going to finish with it so it will not be necessary for me to cross examine him on that.

Mr. Hedges: It is one I overlooked, your Honor.

The Court: All right.

Q. By Mr. Hedges: I show you, Mr. Hough, Plaintiffs' Exhibit 5, which is a location notice affecting the Southwest Quarter of Section 21, the claim known as Temperate No. 3, dated September 7th, 1945. I call your attention to the signature appearing under the heading

(Testimony of Howard Hough)

"Witnesses," Howard H. Hough. Is that your signature?

A. It looks like it, but I very seldom make my H's that way. Sometimes I do.

Q. You cannot say whether it is or it isn't your signature?

A. I believe it is because this is the way I make R's constantly, but I very seldom make H's that way, but I would [140] say that that is my signature, but I would also say it is not the same pen. It doesn't look like the same pen but I believe that is my signature.

Mr. Hedges: No further questions.

The Court: All right.

Mr. Painter: No cross examination.

Mr. Wood: No examination.

The Court: Step down. I think we will take a short recess before you call your next witness.

(Short recess.)

The Court: All right, gentlemen.

Mr. Hedges: If your Honor please, we have been discussing with counsel, and if it is satisfactory with the court we would appreciate it if we could adjourn today at four o'clock.

The Court: I can't approve of that, gentlemen. As you know, I was away and this case had to be re-set and I have so much work to do before I go into the criminal department and then I have to go back to Fresno the last of this month and we must use all available time. I will, however, to help you all I can adjourn today at 4:30.

Mr. Hedges: That is perfectly satisfactory.

The Court: I know you have offices but I have work to do also. There is just so much work and I have to do it.

Mr. Hedges: It doesn't make any difference to me. I [141] was only trying to accommodate counsel.

The Court: I appreciate that. Maybe in a day or so we will shorten the hours if I see we will finish the case. You may proceed.

Mr. Hedges: Mr. Hough came up to me after we had excused him as a witness and wanted to correct a statement that he made. May I recall him?

The Court: I am always glad for a witness to make a correction.

HOWARD H. HOUGH,

called as a witness by and on behalf of the plaintiffs, having been previously duly sworn, was recalled and testified further as follows:

Direct Examination (Resumed)

By Mr. Hedges:

Q. Mr. Hough, I previously examined you with reference to Plaintiffs' Exhibit No. 25, which is the notice of location affecting the Southwest Quarter of Section 21, and known as claim Temperate No. 3, dated September 7th, 1945. I asked you whether or not the signature "Howard H. Hough" appearing under the heading "Witnesses" at the bottom of the page was your signature.

You had some question about it but finally said you thought that it was. Now, you have come to me during the recess and stated that you don't believe that is your signa-[142] ture.

A. Yes, that is the conclusion I came to and I will tell you why. When you first called it to my attention I

(Testimony of Howard Hough)

looked over here on the board and noticed that this particular hole is on the road and I know that I was all along that part there so evidently I missed the date.

Q. I believe you told me you were not out on the property on the 7th—only on the 6th?

A. Only on the 6th.

Q. And you want your testimony corrected accordingly? A. Yes, sir.

Q. Very well, that is all.

The Court: Call your next witness.

Mr. Hedges: Call Mr. Marion H. Eddy.

MARION H. EDDY,

called as a witness by and on behalf of the plaintiffs' having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Marion H. Eddy.

Direct Examination

By Mr. Hedges:

Q. What is your address, Mr. Eddy?

A. Brawley, California, Postoffice Box 1460.

Q. And what is your business, profession, or occupation? [143] A. Banker.

Q. And by whom are you employed?

A. Bank of America.

Q. What branch?

A. Brawley branch, Brawley, California.

Q. Have you been sitting in the courtroom all during the morning session and the afternoon session up to now?

A. Yes, sir.

(Testimony of Marion H. Eddy)

Q. And you listened to the testimony of Mr. H. W. Lewis? A. Yes, sir.

Q. That he had either brought personally or mailed to your bank in Brawley a cashier's check for \$2,500?

A. That is right.

Q. Do you recall approximately the time that you received that cashier's check?

A. No, I couldn't say the approximate time of the day.

Q. I don't want you to be that accurate.

A. You mean the date?

Q. The date, approximate date.

A. I would say it was the 6th of December, or possibly the 5th. I am pretty sure it was the 6th of December, 1945.

Q. December 1945? A. Yes, sir.

Q. Around the early part of December 1945? [144]

A. Yes, sir.

Q. What did you do with the cashier's check that was handed to you? Was it handed to you or was it sent through the mails?

A. No, the check was apparently brought into the bank by Mr. Lewis and presented to our manager, Mr. Fabbri, and he okayed the cashier's check for payment and then he brought Mr. Lewis and introduced him to me, and I made the arrangements for cashing the check into the denominations that were necessary to meet his payroll.

Q. I show you Plaintiffs' Exhibit 45 and ask you if you have ever seen that book before. Examine it, please, before you answer.

A. Well, I couldn't definitely say I have seen it before or not. I know he had a list of names and the amounts that we used in order to make our breakdown on the de-

(Testimony of Marion H. Eddy)

nominations of the money that was used to cash the cashier's check.

Q. You don't recall whether the denominations came from that book or not?

A. I don't know whether it was this or a list separate.

Q. I show you two slips of paper clipped together. One appears to be an adding machine tape slip and the other a currency count slip on yellow paper, on the back of a Bank of America saving deposit slip. Can you identify that?

A. Yes, I recognize my figures on here. [145]

Q. Is that in your handwriting, the figures that appear thereon? A. Yes.

Q. Is that the way you broke down the denominations of the money? A. Yes, sir.

Q. And the total appearing thereon is \$2,500?

A. \$2,500, yes.

Q. And that amount represents the amount of the check you received from Mr. Lewis, the cashier's check?

A. That is right.

Mr. Hedges: I ask that be marked as Plaintiffs' next in order.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 46 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 46, and was received in evidence.)

Q. By Mr. Hedges: Now, you took the \$2,500 and broke it down into the various cash denominations that the laborers could be paid with, is that correct?

A. Yes, that is right.

(Testimony of Marion H. Eddy)

Q. Did Mr. Lewis bring these laborers into the bank?

A. Yes. We gave him the use of our directors' room and lobby to take care of his payroll.

Q. Did he bring them all in at the one time or did he [146] bring them in in groups?

A. No, he brought them in in groups of about eight Mexicans at a time.

Q. What did you do with the money?

A. The money was tured over to Mr. Lewis so he could make up his payroll in advance of bringing the Mexicans in.

Q. In other words, you handed Mr. Lewis the money while he was in the bank, in the directors' room, is that it?

A. Yes, sir.

Q. And did you in turn see him hand the money to these laborers?

A. I didn't see all the groups but as I remember I saw approximately two groups go through there of eight and the whole process took considerable time, although I was busy. I realized even though I was busy that it took quite a considerable length of time and I did see two groups go through of approximately eight people.

Mr. Hedges: You may cross examine, gentlemen.

Mr. Painter: No cross examination.

Mr. Wood: No examination.

The Court: I think these witnesses who are from a distance should be informed that they are not needed any longer. I am sure the witness who just left the witness stand wants to go back to his bank so it will be understood all these witnesses are excused unless for some reason you gentlemen detain them yourselves. [147]

Mr. Hedges: That may be understood.

Mr. Painter: Yes.

The Court: All right, call your next witness.

Mr. Hedges: Mr. Fabbri.

EUGENE J. FABBRI,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Eugene J. Fabbri.

Direct Examination

By Mr. Hedges:

Q. Your full first name? A. Eugene.

Q. Where do you reside, Mr. Fabbri?

A. I live in Brawley, California.

Q. What is your business, profession or occupation?

A. Manager of the Bank of America at Brawley, California.

The Court: What did you do? Close the bank?

The Witness: Just about, Judge.

Mr. Hedges: He says it is not too hot down there yet.

Q. By Mr. Hedges: You have been sitting in the courtroom during the morning session and the afternoon session, have you not? [148] A. Yes, sir.

Q. And have heard the testimony of Mr. H. W. Lewis that he sent a \$2,500 cashier's check down to your bank?

A. Yes, sir; I would say that he brought it down personally.

Q. Brought it down? A. That is right.

(Testimony of Eugene J. Fabbri)

Q. Was it handed to you or to Mr. Eddy?

A. It was handed to me, scrutinized, identified, approved and then turned over to Mr. Eddy for encashment.

Q. And were you in the bank in the early part of December? I believe Mr. Eddy said to the best of his recollection it was about the 4th or 5th of December, 1945?

A. Yes, sir. My records indicate it was on the 6th of December, 1945.

Q. 6th of December? A. Yes, sir.

Q. All right. And were you present when Mr. Eddy broke this cash down into the various smaller denominations?

A. I was not present when he broke it down. However, I identified the list of amounts that were to be broken down.

Q. I call your attention to Plaintiffs' Exhibit 45 and ask you if you ever saw this book before?

A. No, I did not personally see this book, as far as the timebook was concerned, although Mr. Lewis did have with [149] him either the book or the equivalent setting forth the names and amounts of the various persons that were to be paid.

Q. I see. And did you instruct Mr. Eddy to break that down into the proper denominations?

A. That is right, I did.

Q. And were you present while Mr. Lewis brought these men into the bank for payment?

A. Yes. As I recollect it from my vantage point, from my desk, I saw several groups come in and in fact I

(Testimony of Eugene J. Fabbri)

personally went over to find out if Mr. Lewis was getting along all right with the Mexicans. They do not speak the American language very well and oftentimes interpretation does help.

Q. You helped interpret?

A. Well, a word here and there, helped out, yes.

Mr. Hedges: I believe that is all.

Mr. Painter: No cross examination.

Mr. Wood: No cross examination.

The Court: Call your next witness.

Mr. Hedges: Mr. Hodgson.

WAYNE HODGSON,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name. [150]

The Witness: Wayne Hodgson.

Direct Examination

By Mr. Hedges:

Q. Where do you reside, Mr. Hodgson?

A. Apartment 32, Imperial Hotel, Imperial, California.

Q. And what is your business, profession, or occupation? A. Surveyor.

Q. And was that your occupation on the 6th of September, 1945? A. That is correct.

(Testimony of Wayne Hodgson)

Q. Were your services retained on or about the 6th of September, 1945 to go upon the property set forth in the map on the board, Plaintiffs' Exhibit 1?

A. Well, I was working for Mr. Imler and Mr. Hough, more or less, and I went with Mr. Hough but under the direction of Mr. Imler at the time though. Whether or not Mr. Imler knew about this job at the time I don't know, but I went with Mr. Hough.

Q. You were asked, however, to be a witness to some of these locations and in some instances were the actual locator, is that true? A. Yes.

Q. I show you Plaintiffs' Exhibit 3 for identification, a document entitled "Acceptance of Stipulations, Reservations, [151] and Power of Attorney," and call your attention to the bottom of the page of the instrument where in handwriting appears the words, "I hereby delegate, substitute and appoint Wayne Hodgson for me and in my name, place and stead, to execute and perform all of the powers conferred upon me in the foregoing instrument," dated September 6th, 1945, and signed H. W. Lewis, and ask you if you have seen that document before?

A. Yes.

Q. And was that handed to you by Mr. Lewis at or about the date it bears?

A. It was either handed to me by Mr. Lewis or Mr. Houck. I rather believe it was Mr. Houck that handed it to me because Mr. Lewis was indisposed at that time.

Q. That was after he suffered a sunstroke, is that correct? A. Yes, sir.

(Testimony of Wayne Hodgson)

Mr. Hedges: We offer this in evidence as Plaintiffs' Exhibit 3.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 3, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 3 is similar to Exhibit No. 2 on page 76 except that on the second page of Exhibit No. 3 is written the following:

"I hereby delegate, substitute and appoint Wayne H. Hodgson for me and in my name, place and stead to exercise and perform all of the powers conferred upon me by the foregoing instrument.

September 6, 1945.

(Signed) H. W. Lewis

In the Presence of

(Signed) W. W. Bradshaw

(Signed) V. G. Fulmer"]

Q. By Mr. Hedges: I show you now Plaintiffs' Exhibit 6, which is a location notice affecting the Northeast Quarter of Section 28, and the claim entitled Tropical No. 2. [152] I call your attention to the signature appearing at the bottom of the page under the heading, "Witnesses," Wayne H. Hodgson, September 6th, 1945, 12:13 p.m., and ask you if that is your signature? A. Yes.

Q. And did you sign that instrument at or about the time that it bears and the hour? A. Yes.

Q. I show you Plaintiffs' Exhibit 7, which is a location notice affecting the Southeast Quarter of Section 21, being a claim known as Temperate No. 4, dated Septem-

(Testimony of Wayne Hodgson)

ber 6th, 1945, as was the previous exhibit I showed you, and call your attention to the signature appearing at the bottom of the page under the heading "Witnesses"; Wayne H. Hodgson, September 6th, 1945, 12:18 p.m., and ask you whether or not that is your signature?

A. It is.

Q. And you signed it on the date that it bears, September 6th, 1945, and at the hour indicated?

A. That is correct.

Q. Now, Mr. Hough was present with you at that time? A. Yes.

Q. And was he likewise with you on September 6th, on the filing of the claim on Tropical No. 2, Plaintiffs' Exhibit 6? [153] A. Yes.

Q. I call your attention to Plaintiffs' Exhibit 8, being a location notice on the Northwest Quarter of Section 28, a claim known as Tropical No. 1, and call your attention to the signature appearing at the bottom of the page under the heading "Witnesses, Wayne H. Hodgson, September 6th, 1945, 12:30 p.m.," and ask you whether or not that is your signature? A. It is.

Q. And you signed it on the date that it bears and at about the same hour? A. That is correct.

Q. And was Mr. Hough present with you at that time? A. Yes.

Q. And signed in your presence? A. Yes.

Q. I call your attention to Plaintiffs' Exhibit 9, being a location notice on the Northeast Quarter of Section 29 on the claim known as Frigid No. 2, dated September 6th, 1945, and call your attention to the signatures appearing under the heading "Witness" at the bottom of the page,

(Testimony of Wayne Hodgson)

"Wayne H. Hodgson, September 6th, 1945, 12:38 p.m.," and ask you whether or not that is your signature?

A. Yes.

Q. And did you sign that document on September 6th, [154] 1945 or at about the hour it bears? A. Yes.

Q. And was Mr. Hough present with you at that time? A. Yes.

Q. And signed in your presence? A. Yes.

Q. I call your attention to Plaintiffs' Exhibit 10, being a location notice on the Southeast Quarter of Section 20, the claim being known as Torrid No. 4, dated September 6th, 1945, and call your attention to the signature Wayne H. Hodgson appearing at the bottom of the page under the heading "Witness," and dated September 6th, 1945, 12:43 p.m., and ask you whether or not that is your signature? A. It is.

Q. And did you sign your name to this document on September 6th, 1945, at or about the hour therein indicated? A. I did.

Q. And was Mr. Hough present with you at that time? A. He was.

Q. And did he sign the document in your presence? A. He did.

Q. I call your attention to Plaintiffs' Exhibit 11, which is a location notice on the Southwest Quarter of Section 21, the claim known as Temperate No. 3, dated September 6th, 1945, and call your attention to the signature [155] appearing at the bottom of the page under the heading "Witnesses," Wayne H. Hodgson, September 6th, 1945, 12:46 p.m., and ask you whether or not that is your signature? A. It is.

Q. And did you sign it on September 6th, 1945 at or about the hour therein indicated? A. I did.

(Testimony of Wayne Hodgson)

Q. And was Mr. Hough present with you at that time? A. He was.

Q. And did he sign in your presence?

A. He did.

Q. I call your attention to Plaintiffs' Exhibit No. 12, being a location notice on the Southwest Quarter of Section 20, on a claim known as Torrid No. 3, dated September 6th, 1945, and call your attention to the signature under the heading, "Witnesses," at the bottom of the page, "Wayne H. Hodgson, September 6th, 1945, 12:55 p.m.," and ask you whether or not that is your signature?

A. It is.

Q. And did you sign the instrument on September 6th, 1945, at or about the hour therein indicated?

A. I did.

Q. And was Mr. Hough with you at that time?

A. He was.

Q. Did he sign in your presence? [156]

A. Yes, sir.

Q. I show you Plaintiffs' Exhibit 13, being a location notice on the Northwest Quarter of Section 29 on a claim known as Frigid No. 1, dated September 6th, 1945. I call your attention to the signature appearing at the bottom of the page under the heading "Witnesses: Wayne H. Hodgson, September 6th, 1945, 1:01 p.m.," and ask you if that is your signature? A. It is.

Q. And did you sign it on September 6th, 1945 at or about the time therein indicated? A. I did.

Q. And was Mr. Howard H. Hough with you at that time? A. He was.

Q. And did he sign in your presence?

A. He did.

(Testimony of Wayne Hodgson)

Q. I call your attention to Plaintiffs' Exhibit 14, being a location notice on the Northwest Quarter of Section 20, the claim known as Torrid No. 1, dated September 6th, 1945, and call your attention to the signature appearing at the bottom of the page thereof, under the heading "Witnesses: Wayne H. Hodgson, September 6th, 1945, 2:16 p.m." and ask you whether or not that is your signature? A. It is.

Q. And did you sign it on September 6th, 1945 at or [157] about the time and hour therein indicated?

A. I did.

Q. Was Mr. V. G. Fulmer with you at that time?

A. Yes.

Q. Did he sign the instrument in your presence?

A. He did.

Q. On each of these occasions on which I have just interrogated you did you see a duplicate copy or a duplicate original of each of these instruments placed in a glass jar on the location? A. Yes, sir.

Q. I call your attention to Plaintiffs' Exhibit 22, for identification, being a notice of location on the Southeast Quarter of Section 21, the claim known as Temperate No. 4, dated September 7th, 1945, and ask you whether or not the signatures appearing at the bottom of the page under the heading "Locaters" are your signatures? A. They are.

Q. And is the date thereon, September 7th, 1945, in your handwriting? A. Yes.

(Testimony of Wayne Hodgson)

Q. And the figures 10:00 o'clock a.m.? A. Yes.

Q. And was Mr. Fulmer with you at that time?

A. Yes. [158]

Q. Did he witness your signature? A. Yes.

Mr. Hedges: I offer this in evidence as Plaintiffs' Exhibit 22.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 22, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 22 is similar to Exhibit No. 23, save and except as herein-after set forth:

In Exhibit 22, Wayne H. Hodgson has signed as the party who posted for the locators, and V. G. Fulmer signed as the witness for the posting of said Notice at 10:00 A. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 24 for identification, being a location notice on the Northeast Quarter of Section 28 on a claim known as Tropical No. 2, dated September 7th, 1945. I call your attention to the signature "Wayne H. Hodgson" under the heading "Locaters" and ask you whether or not the signatures thereon are yours? A. They are.

Q. And is the date September 7th, 1945 in your handwriting? A. It is.

Q. And is the time, 10:05 a.m., in your handwriting? A. Yes.

(Testimony of Wayne Hodgson)

Q. And was Mr. Fulmer with you at that time as a witness? A. Yes.

Mr. Hedges: I offer this as Plaintiffs' Exhibit 24.

The Court: It will be received. [159]

(The document referred to was marked as Plaintiffs' Exhibit 24, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 24 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 24, Wayne H. Hodgson has signed as the party who posted for the locators, with the date and hour being written in as September 7, 1945, 10:05 o'clock A. M., and V. G. Fulmer has signed as the witness to the posting, with the hour being written in as 10:05 o'clock A. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 26 for identification, being a notice of location on the Southwest Quarter of Section 28, on a claim known as Tropical No. 3, dated September 7th, 1945, and call your attention to the signatures appearing under the heading, "Locaters," "Wayne H. Hodgson," and ask you whether or not those are your signatures?

A. They are.

Q. And is the date September 7th, 1945, 10:30 a.m.—the time 10:30 a.m. in your own handwriting?

A. It is.

Q. And was Mr. Fulmer with you at the time that you signed this instrument? A. Yes.

(Testimony of Wayne Hodgson)

Mr. Hedges: I offer this in evidence as Plaintiffs' Exhibit 26, your Honor.

The Court: It may be received.

(The document referred to was marked as Plaintiffs' Exhibit 26, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 26 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 26, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 10:30 o'clock A. M., and V. G. Fulmer has signed as the party who witnessed the posting of the Notice, with the date and hour being written in as September 7, 1945, 10:30 o'clock A. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 27 for identification, being a notice of location on the Southeast Quarter of Section 29, the claim being known as Frigid No. 4, dated September 7th, 1945, and call your attention particularly to the signatures "Wayne H. Hodgson" at the bottom of the page under the heading "Locaters," and ask you whether or not those are your signatures? A. They are mine.

Q. And is the date September 7th, 1945 and the time, 10:32 a.m., in your handwriting? A. Yes.

Q. And was Mr. Fulmer present with you at that time? A. Yes.

(Testimony of Wayne Hodgson)

Mr. Hedges: I offer this as Plaintiffs' Exhibit 27, your Honor.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 27, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 27 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 27, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 10:32 o'clock A. M., and V. G. Fulmer has signed as the party who witnessed the posting of the Notice, with the date and hour being written in as September 7, 1945, 10:32 o'clock A. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 32 for identification, being a location notice on the Southeast Quarter of Section 28 on a claim known as Tropical No. 4, dated September 7th, 1945, and particularly call your attention to the signatures "Wayne H. Hodgson" appearing under the heading "Locators" at the bottom of the page and ask you whether or not those are your signatures? A. They are.

Q. And is the date thereon, September 7th, 1945, and the time, 11:25 a.m., in your handwriting?

A. It is. [161]

Q. And was Mr. Fulmer present with you on this occasion? A. Yes.

Q. As a witness? A. Yes.

(Testimony of Wayne Hodgson)

Mr. Hedges: Offer this as Plaintiffs' Exhibit 32 if your Honor please.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 32, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 32 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 32, H. W. Lewis has signed as the party posting the Notice of Location; his signature is scratched out, and Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 11:25 o'clock A. M., and V. G. Fulmer has signed as the party who witnessed the posting of the Notice of Location, with the date and hour being written in as September 7, 1945, 11:25 o'clock A. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 33 for identification, being a location notice on the Northeast Quarter of Section 21, on the claim known as Temperate No. 2, dated September 7th, 1945, and call your attention particularly to the signatures "Wayne H. Hodgson" appearing under the heading "Locaters" at the bottom of the page, and ask you whether or not those are your signatures? A. They are.

Q. And in your own handwriting? A. Yes.

Q. The date September 7th, 1945, and the time, 11:40 a.m., is that in your handwriting? A. Yes.

Q. And was Mr. Fulmer with you on this occasion and at that location? [162] A. Yes.

(Testimony of Wayne Hodgson)

Mr. Hedges: I offer this in evidence, if your Honor please, as Plaintiffs' Exhibit 33.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 33, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 33 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 33, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 11:40 o'clock A. M., and V. G. Fulmer has signed as the party who witnessed the posting of the Notice, with the date and hour being written in as September 7, 1945, at 11:40.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 34, for identification, being a notice of location on the Southwest Quarter of Section 20, the claim known as Torrid No. 3, dated September 7th, 1945. I call your attention particularly to the signatures appearing at the bottom of the page under the heading "Locators." "Wayne H. Hodgson," and ask you whether or not those are your signatures? A. They are.

Q. And is the date, September 7th, 1945, and the time, 12:25 p.m., in your own handwriting? A. Yes.

Q. And was Mr. V. G. Fulmer and Mr. W. W. Bradshaw present with you at the time you filed this claim?

A. Yes.

Q. And they signed the claim as witnesses?

A. That is correct.

(Testimony of Wayne Hodgson)

Mr. Hedges: I offer this in evidence, if the court please.

The Court: It may be received. [163]

The Clerk: Plaintiffs' Exhibit 34 in evidence.

(The document referred to was marked as Plaintiffs' Exhibit 34, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 34 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 34, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 12:25 o'clock P. M., and V. G. Fulmer and W. W. Bradshaw have signed as the parties who witnessed the posting of the Notice, with the date and hour being written in as September 7, 1945, at 12:25 P. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 35 for identification, being a notice of location on the Northwest Quarter of Section 29, on a claim known as Frigid No. 4, dated September 7th, 1945, and your attention is particularly directed to the signatures at the bottom of the page under the heading "Locators: Wayne H. Hodgson," and ask you whether or not those signatures are your signatures? A. They are.

Q. And I call your attention to the date, September 7th, 1945, and the time, 12:30 p.m. I have been corrected. This is Frigid No. 1. Are those dates and that time in your own handwriting? A. Yes.

Q. And was Mr. W. W. Bradshaw and Mr. V. G. Fulmer present with you at the time you located this claim? A. Yes.

(Testimony of Wayne Hodgson)

Q. And they so witnessed the instrument?

A. Yes.

Mr. Hedges: I offer this in evidence, if your Honor please.

The Court: It will be received.

The Clerk: Plaintiffs' Exhibit 35 in evidence. [164]

(The document referred to was marked as Plaintiffs' Exhibit 35, and was received in evidence.)

[Clerk's Note: Counsel stipulate Exhibit No. 35 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 35, H. W. Lewis has signed as the party posting the Notice of Location; his signature is scratched out, and Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 12:30 o'clock P. M., and W. W. Bradshaw and V. G. Fulmer have signed as the parties who witnessed the posting of the Notice, with the hour being written in as 12:30 o'clock P. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 37—strike that. I call your attention to Plaintiffs' Exhibit 36 for identification, being a notice of location on the Northwest Quarter of Section 20, on a claim known as Torrid No. 1, dated September 7th, 1945, and particularly call your attention to the signatures appearing at the bottom of the page under the heading, "Locators: Wayne H. Hodgson," and ask you whether or not those signatures are your signatures?

A. They are.

(Testimony of Wayne Hodgson)

Q. And the date September 7th, 1945 and the time 1:15 p.m., are those in your handwriting? A. Yes.

Q. And was Mr. W. W. Bradshaw and Mr. V. G. Fulmer present with you at the time you located this claim? A. Yes.

Q. Did they sign the instrument in your presence?

A. Yes.

Mr. Hedges: I offer this, if your Honor please, as Plaintiffs' Exhibit 36.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 36, and was received in evidence.) [165]

[Clerk's Note: Counsel stipulate Exhibit No. 36 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 36, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date and hour being written in as September 7, 1945, 1:15 o'clock P. M., and W. W. Bradshaw and V. G. Fulmer have signed as the parties who witnessed the posting of the Notice, with the date and hour being written in as September 7, 1945, at 1:15 o'clock P. M.]

Q. By Mr. Hedges: I call your attention to Plaintiffs' Exhibit 37 for identification, being a location notice on the Southwest Quarter of Section 29 on a claim known as Frigid No. 3, dated September 7th, 1945, and particularly call your attention to the signatures appearing at the bottom of the page under the heading, "Locators: Wayne H. Hodgson," and ask you whether or not those are your signatures? A. They are.

(Testimony of Wayne Hodgson)

Q. Now, I notice on this instrument a date in handwriting, September 12th, 1945, where the instruments on each and every other occasion show September 7th. Is that your handwriting, "September 12th"?

A. Yes, that is an error there.

Q. You mean that should have been September 7th?

A. Yes.

Q. And was Mr. Bradshaw present as a witness to the locating of this claim by yourself on September 7th?

A. Yes, sir.

Q. Did he so sign the instrument as a witness?

A. Yes.

Mr. Hedges: I offer this in evidence as Plaintiffs' Exhibit 37.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 37, and was received in evidence.) [166]

[Clerk's Note: Counsel stipulate Exhibit No. 37 is similar to Exhibit No. 23, save and except as hereinafter set forth:

In Exhibit 37, Wayne H. Hodgson has signed as the party posting the Notice of Location, with the date being written in as September 7, 1945, and W. W. Bradshaw has signed as the party who witnessed the posting of the Notice, with the date being written in as September 7, 1945.

Each of said Notices of Location contain the date of the filing, correct legal description, and the book and page in which the claim was recorded in the Office of the County Recorder of Imperial County, California, and a statement of assessment work done, as in Exhibit 23.]

(Testimony of Wayne Hodgson)

Q. By Mr. Hedges: I call your attention, Mr. Hodgson, to Plaintiffs' Exhibit 25, which is a location notice on the Southwest Quarter of Section 21, on a claim known as Temperate No. 3, dated September 7th, 1945, which apparently—strike that. Which bears a signature "Wayne H. Hodgson," and ask you whether or not that is your signature? A. Yes, that is my signature.

Q. You were a witness at that time, at the time Mr. Lewis filed a claim on Temperate No. 3, is that correct?

A. That is correct.

Q. Now, will you tell the court, starting with Plaintiffs' Exhibit No. 37, just what you did when you went out on the Southwest Quarter of Section 29, to file this claim?

A. Point that out on the map, will you, please?

Q. Yes, Frigid No. 3.

A. Well, this is on the morning of the 7th?

Q. Correct.

A. I believe we drove that morning in a command car to a designated spot that we had located the day before. We stopped at the quarter corner of Section 29, Southwest Quarter corner of Section 29. We made sure that we were in the right quarter section. We drove a stake approximately four inches wide and four inches long with the legal description of the quarter section. [167]

Q. I am referring now to the 7th, just to refresh your memory. A. Oh, I am sorry.

Q. This is the 7th of September. Were you also out there on the 6th?

A. Yes. We did all that beforehand on the 6th, I am sorry. We had already located the corner and we put a duplicate copy of this into the pint Mason jar that was already placed there.

(Testimony of Wayne Hodgson)

Q. Now, I notice on this instrument a date in handwriting, September 12th, 1945, where the instruments on each and every other occasion show September 7th. Is that your handwriting, "September 12th"?

A. Yes, that is an error there.

Q. You mean that should have been September 7th?

A. Yes.

Q. And was Mr. Bradshaw present as a witness to the locating of this claim by yourself on September 7th?

A. Yes, sir.

Q. Did he so sign the instrument as a witness?

A. Yes.

Mr. Hedges: I offer this in evidence as Plaintiffs' Exhibit 37.

The Court: It will be received.

(The document referred to was marked as Plaintiffs' Exhibit 37, and was received in evidence.) [166]

[Clerk's Note: Counsel stipulate Exhibit No. 37 is similar to Exhibit No. 23, save and except as hereinafter set forth:

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Each of said Notices of Location contain the date of the filing, correct legal description, and the book and page in which the claim was recorded in the Office of the County Recorder of Imperial County, California, and a statement of assessment work done, as in Exhibit 23.]

(Testimony of Wayne Hodgson)

Q. By Mr. Hedges: I call your attention, Mr. Hodgson, to Plaintiffs' Exhibit 25, which is a location notice on the Southwest Quarter of Section 21, on a claim known as Temperate No. 3, dated September 7th, 1945, which apparently—strike that. Which bears a signature "Wayne H. Hodgson," and ask you whether or not that is your signature? A. Yes, that is my signature.

Q. You were a witness at that time, at the time Mr. Lewis filed a claim on Temperate No. 3, is that correct?

A. That is correct.

Q. Now, will you tell the court, starting with Plaintiffs' Exhibit No. 37, just what you did when you went out on the Southwest Quarter of Section 29, to file this claim?

A. Point that out on the map, will you, please?

Q. Yes, Frigid No. 3.

A. Well, this is on the morning of the 7th?

Q. Correct.

A. I believe we drove that morning in a command car to a designated spot that we had located the day before. We stopped at the quarter corner of Section 29, Southwest Quarter corner of Section 29. We made sure that we were in the right quarter section. We drove a stake approximately four inches wide and four inches long with the legal description of the quarter section. [167]

Q. I am referring now to the 7th, just to refresh your memory. A. Oh, I am sorry.

Q. This is the 7th of September. Were you also out there on the 6th?

A. Yes. We did all that beforehand on the 6th, I am sorry. We had already located the corner and we put a duplicate copy of this into the pint Mason jar that was already placed there.

(Testimony of Wayne Hodgson)

The Court: You did that as to each of the locations to which you have testified?

The Witness: Yes, sir.

The Court: The same procedure?

The Witness: Yes, sir.

The Court: In other words, you found the corner and looked for the jar and put in a duplicate notice of location?

The Witness: Yes, sir.

Q. By Mr. Hedges: That is true on each of the claims that you—strike that.

The Court: I think you had better give him a list of them. I tried to cover it by one question, but I don't remember the numbers.

Mr. Hedges: All right.

Q. By Mr. Hedges: Now, on September 6th, 1945, you witnessed the notice of locations, Plaintiffs' Exhibit 6, where [168] Mr. Lewis filed the claim, is that right? That is on Tropical No. 2 which is located here on Plaintiffs' Exhibit 1. A. That is correct.

Q. And did you see Mr. Lewis at that time—strike that. What did you see Mr. Lewis do?

A. You mean from the time he got out of the car?

Q. When he was on this location what did he do with the duplicate location notice, if he had one?

A. He folded it up and put it in a pint Mason jar that was on the property.

Q. And did you sign your name in the presence of Mr. Hough to the duplicate location notice before he put it into the jar? A. I did.

Q. You witnessed, in other words, the filing?

A. That is correct.

(Testimony of Wayne Hodgson)

Q. And is that same thing true on Temperate No. 4 which is this location on Plaintiffs' Exhibit 1?

A. Yes.

Q. And is the same thing true on Tropical No. 1, which is this location? A. Yes.

Q. On Plaintiffs' Exhibit 1? A. Yes.

Q. And is the same thing true on Frigid No. 2 which I [169] am indicating on Plaintiffs' Exhibit No. 1?

A. Yes.

Q. And is the same thing true on the claim known as Torrid No. 4 which Mr. Shirley is pointing out on Plaintiffs' Exhibit No. 1? A. Yes.

Q. And is the same thing true on Temperate No. 3, which is being pointed out on Plaintiffs' Exhibit 1?

A. Yes.

Q. And is the same thing true on Torrid No. 3 which Mr. Shirley is pointing out on Plaintiffs' Exhibit 1?

A. Yes.

Q. And is the same thing true on Frigid No. 1 which Mr. Shirley is pointing out on Plaintiffs' Exhibit 1?

A. Yes.

Q. Likewise, on Torrid No. 1, which Mr. Shirley is pointing out on Plaintiffs' Exhibit 1?

A. No, on Torrid No. 1 Mr. Lewis did not place the piece of paper in the Mason jar.

Q. All right. Tell us just exactly what did happen on that location.

A. Mr. Lewis at approximately, I should say 200 yards from our corner, Government corner, Mr. Lewis was overcome by the heat and he sat down in the shade of a greasewood tree and signed this document I have before me, and Mr. Fulmer [170] and myself witnessed

(Testimony of Wayne Hodgson)

it and then I proceeded to find the corner and put it into the Mason jar that we had set there.

Q. In other words, Mr. Lewis instructed you to do that and he signed the instrument and you signed as witnesses? A. That is correct.

Q. But you know of your own knowledge that the claim was filed and placed in the glass jar at that location?

A. Yes. I might add at the time Mr. Lewis filed I am positive we were on that said quarter section, on the quarter section.

Q. On Torrid No. 1? A. Torrid No. 1, yes.

Q. I was only amused at your having him sit down under a greasewood tree. I know that is not much shade.

A. Any little bit helps, boy, out there.

Q. Now, on the filings on September 7th, the following day, 1945, will you tell us what you did in connection with the duplicate location notices, if there were any, on the claim known as Temperate No. 4, which is Plaintiffs' Exhibit 22? Mr. Shirley is pointing out the location on Plaintiffs' Exhibit 1.

A. I signed my name to the duplicate of Exhibit No. 22 and Mr. Fulmer witnessed it in my presence. I folded it up and put it in a pint Mason jar we had set there the previous day. [171]

Q. All right. Now, is that the same situation—strike that. Is that the same situation, is that same situation true as to Tropical No. 2 on September 7th, 1945?

A. Yes.

Q. And is the same thing true as to Tropical No. 3 on September 7th, 1945? A. Yes.

Q. Let the record show Mr. Shirley is pointing each of these locations out on Plaintiffs' Exhibit 1. And is

(Testimony of Wayne Hodgson)

the same thing true on Frigid No. 4 on September 7th, 1945? A. Yes.

Q. And as to Tropical No. 4 on September 7th, 1945—Tropical No. 4 is here? A. Yes, that is right.

Q. And is the same thing true as to Temperate No. 2 on September 7th, 1945? A. That is correct.

Q. And as to Torrid No. 3 on September 7th, 1945?

A. Yes.

Q. And as to Frigid No. 1 on September 7th, 1945?

A. Yes.

Q. And as to Frigid No. 3 on September 7th, 1945?

A. Yes.

Q. And as to Torrid No. 1, on September 7th, 1945?

A. Yes. [172]

Q. Now, did you go back on the property described in Plaintiffs' Exhibit 1 after September 7th, 1945?

A. Yes.

Q. And do you recall just when that was?

A. No, I don't. I have been on the property several times, you might say in the capacity of seeing what was going on in the way of development and what they were doing and out of my own curiosity, but acting in an official capacity for Mr. Lewis in any way, I went back onto the property at a later date but I don't know for sure what date it was.

Q. Do you recall the month? Was it in November or December of 1945, or October?

A. Well, I believe it was closer to November.

Q. Closer to November of 1945?

A. Maybe. I think it was—I think it was a little later than that. Probably in December—No, it was in the middle of the school term.

(Testimony of Wayne Hodgson)

Q. All right. You do not recall the exact time?

A. I don't. I would have had a positive record of it—I was going to school at the time and if I recall it was on a Saturday and Sunday and it don't show in the record.

Q. Were there any other persons working on the property at the time you were there? A. Yes.

Q. And I believe you have been in the courtroom all [173] morning, haven't you, and up to now?

A. Yes, sir.

Q. And you heard, did you not, Mr. Lewis' testimony that that work was done during the month of November?

A. I believe I did, yes.

Q. Would that refresh your memory as to about the time you were on the property doing some work?

A. Yes. I will say the time I was on the property was at the same time Mr. Lewis was on doing the work, too.

Q. Now, will you tell us just what your duties, if any, consisted of on the property sometime during the month of November, 1945?

A. My duties were to dig two holes 25 by 25 by 5—that is 25 feet by 25 feet and five feet deep.

Q. Do you recall which particular locations you performed this work upon?

A. Yes, I do. It is—I can't read it from here.

Q. I will indicate and you tell me if I am wrong. Are you referring to Torrid No. 1? A. That is correct.

Q. And what is the other one? A (No answer.)

(Testimony of Wayne Hodgson)

Q. You can step down if you will where you can see them a little better.

A. I believe it was Tropical No. 2—No, no, I take [174] it back. It is Tropical No. 4.

Q. Tropical No. 4? A. Yes.

Q. And Torrid No. 1, is that right?

A. That is correct. Let me check here. Now, it was on either one side of this road, but I can't be for sure. Let me say it was either on Tropical No. 4 or on Temperate No. 2.

Q. Well, it has been sometime ago now and you have forgotten?

A. Yes. I will state definitely right now that it was on Temperate No. 2.

Q. Temperate No. 2 and Torrid No. 1?

A. Yes.

Q. At this location and at this location, indicating from Plaintiffs' Exhibit 1? A. That is right.

Q. Did you have a crew of men with you?

A. I did.

Q. And were they white or Mexicans?

A. They were white.

Q. And you say your work consisted of digging two pits, one pit on each location?

A. That is correct.

Q. And how long did you work on each of those [175] locations?

A. I worked very close to 10 hours on Saturday and 10 hours on Sunday during that month.

Q. Do I understand by that you mean you worked more than one Saturday and Sunday?

A. No; we were only out there for two days. I split the crew up into two working crews.

(Testimony of Wayne Hodgson)

Q. In other words, you worked during that month one Saturday and one Sunday 10 hours each?

A. Yes, in close succession. Probably the Sunday was following the Saturday.

Q. I show you Plaintiffs' Exhibit 40 and ask you if you have seen that book before? A. Yes.

Q. And calling your attention to the names appearing on page 5, are those the names of the men whom you employed to assist you on these two locations?

A. Yes, sir.

Q. Let us call that page No. 10. They are double pages in the book. We will call it No. 10 so there will be no confusion. And are the amounts set forth after the respective names the amounts of money—strike that. Did you pay these men for their services in connection with this work? A. Yes. [176]

Q. And where did you receive the money with which to pay them?

A. I received it from Mr. H. W. Lewis.

Q. Are the amounts set forth after each of these men's names the amount of money which each of them received for their services?

A. This amount stipulated here is for two days work.

Q. I see. A. Yes, that is correct.

Q. For the record we indicate the balance at the bottom of the line which is \$256.50, is that correct?

A. That is right, if it was added correctly.

Q. If the total is right?

A. If it is added correctly, yes.

Q. That is what appears on the book at the bottom?

A. Yes.

The Court: Did you pay yourself, too?

(Testimony of Wayne Hodgson)

The Witness: Yes, sir, I made sure of that.

Mr. Hedges: He is right at the top of the list, your Honor, No. 1.

The Court: He is at the top of the list. Were you going to high school?

The Witness: No, I was going to Junior College.

The Court: And working Saturdays and Sundays?

The Witness: Yes, I was working for Mr. Imler and what-[177] ever other kind of work came up on Saturdays and Sundays. I could usually get a job with some of the surveyors around levelling land and that is what I did.

The Court: Is the Junior College located in Brawley?

The Witness: Well, they had one in Brawley but at that time the Brawley Junior College was shut down on account of the lack of students, on account of the war. I believe it is started up now but at the time I was going to J. C. in El Centro, a very small school.

Q. By Mr. Hedges: Now, this Saturday and Sunday that you performed this work was prior in time to the first day of December, was it not, of 1945?

A. I couldn't say for sure but I believe so.

Q. All right. Now, were you on the property after the time that you performed this work which you said to the best of your recollection was sometime during the month of November 1945?

A. Will you state that question again?

Mr. Hedges: Will you read the question.

(Question read.)

A. Yes, I was.

(Testimony of Wayne Hodgson)

Q. By Mr. Hedges: How many times and what were the dates as near as you can tell, if you can remember?

A. I cannot say how many times nor exactly the dates.

Q. Well, was it during the year of 1945? [178]

A. Yes, let us say it was within a month after the first time that I had drawn on—I am speaking of the month of November.

Q. All right. And what was your purpose in going on the property at that time?

A. Then my purpose was to measure the holes and compute the amount of cubic yardage moved and getting the signatures off of the claim sheets—the witnesses and the locaters and sending them in—a list to Mr. H. W. Lewis.

Q. Did you examine each of the locations on that occasion? A. Yes.

Q. And were the location notices to which I interrogated you a few minutes ago, in each instance in the jars?

A. They had not been disturbed.

Q. Did you ever see Mr. John A. Jose on the property at any time during 1945 or the early part of 1946?

A. Yes, I did.

Q. Mr. Jose being one of the defendants in this action? A. Yes.

Q. Do you recall when that was?

A. No, I don't recall the exact date but I should say it was in the same month we are talking about here, November.

Q. You mean this was after the time that you had performed the work or during that time? [179]

A. That was after the time that I performed the work.

No. 11749
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER,
WILLIAM LANCASTER, ELLA JACKMAN,
JOHN I. JACKMAN, GEORGE T. RENAKER,
JOHN S. PATTEN, HARRIS H. HAMMON, A.
L. BERGERE, J. C. BERGERE, WILLARD
WALLACE, EDNA M. WALLACE, JAMES P.
DELANEY, MARY J. DELANEY and IRVIN
S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administrator of the Estate
of Stanley B. Houck, Deceased, RUBY E. EDLING,
WILNA M. SHEPARD, HATTIE M. HOUCK,
RUTH M. HEBBERD, MINNIE N. McKEN-
ZIE, HOWARD H. McKENZIE, VERONICA K.
GHOSTLEY and H. W. LEWIS,

Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 209 to 432, Inclusive)

Upon Appeals From the District Court of the United States
for the Southern District of California

Central Division

FILED

APR 12 1948

(Testimony of Wayne Hodgson)

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A. I cannot say how many times nor exactly the dates.

Q. Well, was it during the year of 1945? [178]

A. Yes, let us say it was within a month after the first time that I had drawn on—I am speaking of the month of November.

Q. All right. And what was your purpose in going on the property at that time?

A. Then my purpose was to measure the holes and compute the amount of cubic yardage moved and getting the signatures off of the claim sheets—the witnesses and the locaters and sending them in—a list to Mr. H. W. Lewis.

Q. Did you examine each of the locations on that occasion? A. Yes.

Q. And were the location notices to which I interrogated you a few minutes ago, in each instance in the jars?

A. They had not been disturbed.

Q. Did you ever see Mr. John A. Jose on the property at any time during 1945 or the early part of 1946?

A. Yes, I did.

Q. Mr. Jose being one of the defendants in this action? A. Yes.

Q. Do you recall when that was?

A. No, I don't recall the exact date but I should say it was in the same month we are talking about here, November.

Q. You mean this was after the time that you had performed the work or during that time? [179]

A. That was after the time that I performed the work.